83-647

Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

No.

In The
Supreme Court of the United States

OCTOBER TERM, 1983

LUI SU NAI-CHAO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LUI CHO-PON DECEASED, ET AL.,

Petitioners,

VERSUS

THE BOEING COMPANY, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to The United States Court of Appeals For the Ninth Circuit

PETITION FOR CERTIORARI

OF COUNSEL:

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QUESTIONS PRESENTED

I. Whether a United States District Court has discretion to grant *forum non conveniens* dismissal (consigning American plaintiffs to the courts of a foreign country) on the basis of the Court's own administrative problems, when the traditional "private interest" balancing process shows that the U.S. and foreign forums are approximately equally convenient for the litigants.

II. Whether the United States' interest in deterring United States manufacturers and sellers from the worldwide dissemination of dangerously defective products is a strong "public interest" factor favoring retaining U.S. forum jurisdiction in actions against U.S. manufacturers and sellers.

III. Whether American plaintiffs are entitled to a presumption favoring retention of jurisdiction by the United States, when defendants are American corporations and the applicable law will be the law of the United States whether the case is tried here or abroad.

LIST OF ALL PARTIES AS REQUIRED BY SUPREME COURT RULE 21.1(b)

The undersigned counsel for Lui Su Nai-Chao, et al., petitioners, certifies that the following were parties to the proceedings below:

LUI SU NAI-CHAO, individually, as personal representative of the estate of Lui Cho-Pon, and as duly appointed guardian ad litem, next friend and natural parent of her minor child LUI YU-CHANG; LUI YU-TON and LUI SON-JONG, surviving dependent major children of the decedent, Lui Cho-Pon; LUI SHU-

SHING, LUI CHO-HEA, LUI CHO-YI and LUI CHO-GI, surviving dependent siblings of the decedent Lui Cho-Pon; LUI YEE-KOU, surviving dependent parent of the decedent Lui Cho-Pon.

TSENG CHEN-CHENG, individually and as personal representative of the estate of Tseng Su-Jing; TSENG PO-MING, TSENG PO-JEN, TSENG PO-YONG, TSENG MEI and TSENG YO-JUNG, surviving dependent siblings of the decedent Tseng Su-Jing; TSENG LENG-CHO, surviving dependent parent of the decedent Tseng Su-Jing.

TSEN CHU-CHUN, individually, as personal representative of the estate of Tsen Tsin Ching, and as duly appointed guardian ad litem, next friend and natural parent of the decedent's dependent minor siblings; TSEN CHEN-SHAI, TSEN CHEN-GEE and TSEN WUEI-CHUN; TSEN CHEN-RONG and TSEN CHEN-GA, surviving dependent siblings of the decedent Tsen Tsin Ching; TSEN HWANG KWEI-SHO, surviving dependent parent of the decedent, Tsen Tsin Ching.

CHAI PIEI YU, individually and as personal representative of the estate of Nei Jai-Bin; NEI JUA-FU, NEI JUA-CHIN, NEI LEE-CHU and NEI MEI-CHU, surviving dependent siblings of the decedent, Nei Jai-Bin; NEI CHI-MON and NEI LEE SHEI-JAU, surviving dependent parents of the decedent Nai Jai-Bin.

CHEN WEI-CHING, individually and as personal representative of the estates of Chen Cheng-An and Chen Pin-Yong; CHEN YI-LI, CHEN YI-HUA,

CHEN LI-YING, CHEN CHENG-TA and CHEN CHENG-CHAN, surviving dependent siblings of the decedent Chen Cheng-An; CHEN GIAN CHOU-CHEO, surviving dependent parent of the decedent Chen Cheng-An and surviving grandmother of the decedent Chen Pin-Yong; CHEN YA-KAOU, surviving dependent grandmother of the decedent, Chen Cheng-An and as the surviving great grandmother of the decedent Chen Pin-Yong.

LEE SHIH-HON, individually and as personal representative of the estate of Lee Kou-Ling; LEE MEI-LING and LEE CHIEN-CHEIH, surviving dependent siblings of the decedent Lee Kou-Ling; LEE LIN SHIU-CHEN, surviving dependent parent of the decedent Lee Kou-Ling.

NEI CHUANG YUA, individually, as personal representative of the estate of Nei Shi-Shue, and as duly appointed guardian ad litem, next friend and natural parent of her minor children NEI JEN TON, NEI CHUANG FUA, NEI JEN NA, NEI WAN CHIN and NEI WAN TIN; NEI CHUN LIN, NEI SHI HO, NEI WAN YEE and NEI TSAI, surviving dependent siblings of the decedent Nei Shi-Shue; NEI WU KAN, surviving dependent parent of the decedent Nei Shi-Shue; NEI WEI YEN, surviving dependent grandmother of the decedent Nei Shi-Shue.

LU CHEN CHOUN-MEI, individually and as personal representative of the estate of Lu Chang-Hon; LU CHANG SHINN and LU SHIN-HEI, surviving dependent siblings of the decedent Lu Chang-Hon; LU WEN-TAO and LU SU-MEI, surviving dependent parents of the decedent Lu Chang-Hon.

CHEN SU KWEN-SEI, individually and as personal representative of the estate of Chen Mei-Chi; CHEN YU-YE, CHEN CHA-WEI, CHEN SHIANG, CHEN CHIAR, CHEN YU-CHUN, CHEN YI-YU, CHEN LING-JUNG, CHEN SUE-SHEN, CHEN SUE-CHEN and CHEN SUE-YON, surviving dependent major children of the decedent Chen Mei-Chi; CHEN MEI KUWI and CHEN MEI SHI, surviving dependent siblings of the decedent Chen Mei-Chi.

SOU CHOU-YEO, individually, as personal representative of the estate of Huang Cheng-Sung, and as duly appointed guardian ad litem, next friend and natural parent of her minor child, HUANG YU-CHIN; HUANG ROU and HUANG LI-RON, surviving dependent major children of the decedent Huang Cheng-Sung; HUANG CHIN-YU, HUANG CHIAI-SHAN, HUANG CHIN FON and HUANG YU-CHEN, surviving dependent siblings of the decedent Huang Cheng-Sung; HUANG PON-BEAN, surviving dependent parent of the decedent Huang Cheng-Sung.

HSU LIN HSUEH-HSIA, individually and as personal representative of the estate of Hsu Chun-Yu; HSU CHUN-HON, HSU CHUN-CHEN, HSU PIN-CHEN and HSU WEN-CHIN, surviving dependent siblings of the decedent Hsu Chun-Yu; HSU CHAO-SHING and HSU LIN TONG-KENG, surviving dependent grandparents of the decedent Hsu Chun-Yu.

WU LIN HSING TSU, individually and as personal representative of the estate of Wu Cheng-Lien; WU CHIN-WEN and WU MING-CHIN, surviving de-

pendent major children of the decedent Wu Cheng-Lien; WU SHAN-CHUAN and WU TUNG HSIU-YING, surviving dependent parents of the decedent Wu Cheng-Lien.

L. S. CHANG, individually, as personal representative of the estate of K. N. Lai, and as duly appointed guardian ad litem, next friend and natural parent of her minor child Y. J. LAI; LILY LAI, PETER CHANG, C. Y. LAI, S. S. TU, LOBO LAI and Y. P. CHEN, surviving dependent siblings of the decedent K. N. Lai; Y. C. LAI and J. B. TSAI LAI, surviving dependent parents of the decedent K. N. Lai.

LUI JOE JAU, individually, as personal representative of the estate of Chen Min Kai, and as duly appointed guardian ad litem, next friend and natural parent of her minor children, CHEN JEN CHEI and CHEN JUN YIN; CHEN SHOE, CHEN MIN-LONG, CHEN MIN-CHON and CHEN MIN-YAN, surviving dependent siblings of the decedent Chen Min Kai; CHEN CHUN HAU and CHEN KUO BAU, surviving dependent parents of the decedent Chen Min Kai.

LEE TSON-JEN, individually and as personal representative of the estate of Lee Jill Mann-Hwey; LEE SHENG-YI and LEE SHENG-WEI, surviving dependent siblings of the decedent Lee Jill Mann-Hwey; LEE YU-CHI, surviving dependent parent of the decedent Lee Jill Mann-Hwey.

LEE CHUN-HUI, individually and as personal representative of the estate of Lee Chuang Ying-Yu; LEE YEN-LING, LEE SHIN-YI, LEE YA-LING and LEE CHU-LING, surviving dependent major children of the decedent Lee Chuang Ying-Yu.

CHU CHAO-NAN, individually, as personal representative of the estate of Chang Mei-Chu, and as duly appointed guardian ad litem, next friend and natural parent of his minor children CHU YUON-CHENG and CHU YUON-YU; CHANG MEI-GEO, CHANG MEI-YU, CHANG MEI-GYU, CHANG MEI-HAW, CHANG MEI-HEIW, CHANG CHUAN-DEE and CHANG KWEA-YING, surviving dependent siblings of the decedent Chang Mei-Chu; CHANG YU-LANG and CHANG CHEN CHAU-YUN, surviving dependent parents of the decedent Chang Mei-Chu.

WANG TEN HWA, individually, as personal representative of the estate of Hsu King Kwang, and as duly appointed guardian ad litem, next friend and natural parent of her minor child HSU TWEI CHON; HSU YAN JEN, HSU YUN CHU and HSU CHIN YUN, surviving dependent major children of the decedent Hsu King Kwang; HSU TEN HWA, HSU TEN SHOE, HSU PUAN MEI, HSU GUN MEI and HSU JI MEI, surviving dependent siblings of the decedent Hsu King Kwang.

CHO SHU HEI, individually, as personal representative of the estate of Chen Lin-Ho, and as duly appointed guardian ad litem, next friend and natural parent of her minor child, CHEN YI-HON; CHEN GEE-RONG, surviving dependent sibling of the decedent Chen Lin-Ho; WU PEI-KIN and WU WONG YU-SHIEH, surviving dependent parents of the decedent Chen Lin-Ho.

LO KUEI-YING, individually, as personal representative of the estate of Tsai Hon-Cheng, and as duly appointed guardian ad litem, next friend and natural

parent of her minor children, TSAI YI-HOE and TSAI WU-HOA; TSAI KOUEN-MING, TSAI KOUEN-CHING, TSAI YING-TA, TSAI KOUEN-CHEN, TSAI LI-JEN, TSAI LI-JIOU, TSAI LI-SHING, TSAI LI-CHEN and TSAI LI-FIN, surviving dependent siblings of the decedent Tsai Hon-Cheng; TSAI YONG MEI-CHU, surviving dependent parent of the decedent Tsai Hon-Cheng.

KUO LEE KUEI MEI, individually, as personal representative of the estate of Kuo Ji Chun, and as duly appointed guardian ad litem, next friend and natural parent of her minor children KUO MEI CHU, KUO BEE JOE and KUO BEE JUN; KUO JIN SU and KUO LIN YA YE, surviving dependent parents of the decedent Kuo Ji Chun.

CHANG YU JONG, individually and as personal representative of the estate of Chen Ho Chun; CHEN JONG FONG, CHEN SU LIN, CHEN SU JWEI and HSU CHEN CHUN-HON, surviving dependent siblings of the decedent Chen Ho Chun; LEE TEN SOU and CHEN YU HUEI, surviving dependent parents of the decedent Chen Ho Chun; CHEN SHE TON and CHEN KUO FONG, surviving dependent grandparents of the decedent Chen Ho Chun.

HUANG SEO SHOW-YEO, individually, as personal representative of the estate of Huang Jee-Shung, and as duly appointed guardian ad litem, next friend and natural parent of her minor children, HUANG FON-JEN, HUANG SHAU-FUN, HUANG PA-YING and HUANG CHI-ROUEI; HUANG SHE-CHAN and HUANG MING-CHANG, surviving dependent siblings

of the decedent Huang Jee-Shung; HUANG PAN and HUANG SEO-SOAN, surviving dependent parents of the decedent Huang Jee-Shung.

HUNG TORNG JONG, individually and as personal representative of the estate of Hung Kong Long; HUNG JING-MIN, HUNG SUE-MIN, HUNG SING MEI, HUNG SHWU MEI, HUNG FUH MEI and HUNG GUEY MEI, surviving dependent siblings of the decedent Hung Kong Long; HONG HUANG YU-I, surviving dependent parent of the decedent Hung Kong Long.

HON WON YIN-JUEI, individually, as personal representative of the estate of Hon Kong-Chi, and as duly appointed guardian ad litem, next friend and natural parent of their minor child HON JA-LUNG; HON JA-HON, HON MING JEO, HON YI-SHUEIH, HON JA-JOU and HON CHOEI-YEI, surviving dependent major children of the decedent Hon Kong-Chi; WUNG HON JA-SHU, HON RONG-SHEN, HON RONG-KUO, HUANG HON MEI-NYU, CHEN HON MEI-SHIEH and HON RONG-CHENG, surviving dependent siblings of the decedent Hon Kong-Chi.

CHEN CHIU MEI, individually and as personal representative of the estate of Ma Wen-Tong; MA WU-HSIUNG, MA WEN-MING, MA WEN-CHING, MA WEN-CHENG, MA WEN-HO and MA SU-YU, surviving dependent siblings of the decedent Ma Wen-Tong; MA CHING-PIAO and MA LIN HSIU-YUAN, surviving parents of the decedent Ma Wen-Tong; MA CHANG PEI, surviving dependent grandparent of the decedent Ma Wen-Tong.

LIU SHOW CHING, individually, as personal representative of the estate of Sun-Fun, and as duly appointed guardian ad litem. next friend and natural parent of her minor child SUN YU-SU; SUN LEE-HWUA, surviving dependent sibling of the decedent Sun-Fun; SUN CHIH-GA and LIN KOEI, surviving dependent parents of the decedent Sun-Fun.

WANG CHEN MEI FONG, individually, as personal representative of the estate of Wang Pi Hong, and as duly appointed guardian ad litem, next friend and natural parent of her minor children WANG AI LING, WANG CHEN HWA, WANG HWEI JUN and WANG SHAU JU; WANG SHIAN, surviving dependent sibling of the decedent Wang Pi Hong; WANG TU TOU, surviving dependent parent of the decedent Wang Pi Hong.

CHEN LO HUI-YU, individually and as personal representative of the estate of Chen Chu-Chou; LESLIE LEE, CHEN YUNG-TSEN and JOSEPH J. C. CHEN, surviving dependent major children of the decedent Chen Chu-Chou.

BETTY SHU, individually, as personal representative of the estate of Dick Chiang and as duly appointed guardian ad litem, next friend and natural parent of her minor children, CHIANG CHEN FAUN and CHIANG CHEN TUN; ERIC CHIANG, surviving dependent sibling of the decedent, Dick Chiang; CHIANG HON-SHING and LIEN CHIN PIN, surviving dependent parents of the decedent Dick Chiang.

HSU CHING-CHIH, individually, as personal representative of the estate of Hsu Ko Mei-How, and as duly appointed guardian ad litem, next friend and natu-

ral parent of his minor children HSU SHE-HEI, HSU JA-TAI and HSU CHEN-YA; CHANG MEI-YEOU, surviving dependent sibling of the decedent Hsu Ko Mei-How; KO CHANG JIN-HO and HSU LIN YA-TSAI, surviving dependent parents of the decedent Hsu Ko Mei-How.

CHANG YU-CHIEF, individually and as personal representative of the estate of Chang Sen; CHANG CHEN-WU, CHANG MIEN, CHANG CHUAN, CHANG SHU, CHANG LUN and CHANG SHUENG, surviving dependent siblings of the decedent Chang Sen; CHANG SHOU-CHEN, surviving dependent parent of the decedent Chang Sen.

CHIANG CHING-TE, individually, as personal representative of the estates of Cheng Po-Cheng, Chiang Chan Jin and Chiang Chu Jen, and as duly appointed guardian ad litem, next friend and natural parent of his minor child CHIANG PAU LIN; CHOU YOU YIN, surviving sibling of the decedents Cheng Po-Cheng, Chiang Chan Jin and Chiang Chu Jen; CHIANG WEI SHEN MEI, surviving parent of the decedents Cheng Po-Cheng, Chiang Chan Jin and Chiang Chu Jen; CHANG LEE CHIN and CHANG CHIANG YUN MEI, surviving grandparents of the decedents Cheng Po-Cheng, Chiang Chan Jin and Chiang Chu Jen.

LO WEN-SHAN, individually, as personal representative of the estate of Lo Shih-Chung, and as duly appointed guardian ad litem, next friend and natural parent of his minor children, LO CHIA-HUA, LO DING-CHUNG and LO CHIA-HUI; CHING LI-YUAN, surviving mother of decedent Lo Shih-Chung.

HUANG CHUNG-SHUNG, individually and as personal representative of the estates of Kin Kow Yu, Huang Yi-Jee and Huang Ing-Ling; KIN JAI-CHEN and KIN TUNG KEI-CHIN, surviving dependent parents of the decedent Kin Kow Yu and surviving grandparents of the decedents Huang Yi-Jee and Huang Lin-Ling.

CHEN TIEN-TSENG, individually and as personal representative of the estate of Chen Shann-Kang; CHEN SHANN-JI, CHEN CHING-CHIEN, CHEN SHANN-JIUN and CHEN JING-YIH, surviving dependent siblings of the decedent Chen Shann-Kang; SHAN NIEH CHYN-FENN, surviving dependent parent of the decedent Chen Shann-kang.

CHANG HSIU YU, individually, as personal representative of the estate of Lin Huei-Tein, and as duly appointed guardian ad litem, next friend and natural parent of her minor children LIN HSIN-MIN and LIN YI-CHIA; LIN CHIN-SHENG and LIN WANG JUI, surviving dependent parent of the decedent Lin Huei-Tein.

CHEN YUAN SHUANG, individually and as personal representative of the estate of Chen Jiei Ming; CHEN JIEI WEN, surviving dependent sibling of the decedent Chen Jiei Ming; SHA MEI-MEE, surviving dependent parent of the decedent Chen Jiei Ming.

HSU PI-LING, individually, as personal representative of the estate of Hsiung Ching-Li, and as duly appointed guardian ad litem, next friend and natural parent of her minor children HSIUNG HSIAO-CHING, HSIUNG HSIAO-MEI and HSIUNG CHIH-HAO; HSIUNG LU-KUEI and LEE SHU-FANG, surviving

dependent parents of the decedent Hsiung Ching-Li.

LIN YU-HWA, individually, as personal representative of the estate of Chen Jin Hwa, and as duly appointed guardian ad litem, next friend and natural parent of her minor child CHEN YU-HONG; CHEN SHOE-YIN, CHEN SHOE-SEA, CHEN LEE-LIU, CHEN LEE-JONG and CHEN YIN-NEW, surviving dependent siblings of the decedent Chen Jin Hwa; CHEN HSIAN and CHEN LEE YU KWEI, surviving dependent parents of the decedent Chen Jin Hwa.

HUNG TWEI CHI, individually, as personal representative of the estate of Yang Yi-Cheng, and as duly appointed guardian ad litem, next friend and natural parent of her minor children YANG SHIN YE and YANG SHIN JEN; YANG CHIEN-HO, YANG HUI-YUN, YANG YI-HON, YANG YI-CHANG and YANG YI-FANG, surviving dependent siblings of the decedent Yang Yi-Cheng; YANG YU-PEN and YANG WEI YA-MEI, surviving dependent parents of the decedent Yang Yi-Cheng.

TSENG CHOU KIN-JUN, individually and as personal representative of the estate of Tseng K. Y.; TSENG WEN-SHANG, TSENG WEN-KON, TSENG WEN-LIUNG and TSENG SHEU-FUN, surviving dependent major children of the decedent Tseng K. Y.; TSENG MU-HSIANG, TSENG JIH-HSIANG, TSENG KUEI-HSIANG, TSENG HO-HSIANG, TSENG CHIA-SUNG, TSENG CHIA-YAN and HUNG TSENG MEI-CHU, surviving dependent relatives of the decedent Tseng K. Y.; TSENG YONG-KOY, surviving dependent mother of the decedent Tseng K. Y.

SING YU-CHING, individually, as personal representative of the estate of Sing Ning-Hui, and as duly appointed guardian ad litem, next friend and natural parent of his minor children SING WEI-JUN and SING MON-JUN; SING NING-GUAN and SING WEI-CHIN, surviving dependent siblings of the decedent Sing Ning-Hui; SING LI SHO-CHI, surviving dependent parent of the decedent Sing Ning-Hui; YANG GEE-SHE and WON SHEN-HO, surviving dependent grandparents of the decedent Sing Ning-Hui.

CHENG CHO SHU-CHI, individually, as personal representative of the estate of Cheng Chen-Chu, and as duly appointed guardian ad litem, next friend and natural parent of the minor children CHENG PO-YU, CHENG ZEE-YU and CHENG WEN-YU; CHENG SHU-SING, CHENG CHEN-YUN and CHENG CHEN-SHAW, surviving dependent siblings of the decedent Cheng Chen-Chu; CHENG CHUN-MU and CHENG HUANG HSING, surviving dependent parents of the decedent Cheng Chen-Chu.

WANG LIN JU-CHU, individually, as personal representative of the estate of Wang Ming-Fu, and as duly appointed guardian ad litem, next friend and natural parent of her minor child, WANG CHIA-YEH; WANG CHIA-SHENG, surviving dependent major child of the decedent Wang Ming-Fu; TSAI-TZE, surviving dependent relative of the decedent, Wang Ming-Fu.

LIAO TI-CHUAN, individually and as personal representative of the estate of Liao Han-Ghang; LIAO HAN-CHAO, LIAO HAN-CHIU, LIAO KUANG-MEI, LIAO AI-MEI, LIAO YU-MEI and LIAO

CHING-MEI, surviving dependent siblings of the decedent Liao Han-Ghang; LIN LIEN-FEN, surviving dependent parent of the decedent Liao Han-Ghang.

CHEN SHIEU-ING, individually, as personal representative of the estate of Wu William G., and as duly appointed guardian ad litem, next friend and natural parent of her minor children WU CHEN-YEN, WU YEO-TENG and WU YEO-AN; WU CHI-CHON, WU WEI-BOU, WU WEI-KAN, WU WEI-SHEN, LUI WU SHOU SHEI and CHEN WU SHOU-LIN, surviving dependent siblings of the decedent Wu William G.; WU CHOU-CHING and WU CHUNG YU-SHIEN, surviving dependent parents of the decedent Wu William G.

YEN SHOE CHIN, individually, as personal representative of the estate of Lin Shen Yuan, and as duly appointed guardian ad litem, next friend and natural parent of her minor children, LIN MUN YIN and LIN JUN JONG; LIN CHEN JEN, LIN SU LIN, LIN SU JIN, LIN SU YUAN, LIN HONG CHUNG and LIN SHEN JIN, surviving dependent siblings of the decedent Lin Shen Yuan; CHENG JIN LIEN, surviving dependent parent of the decedent Lin Shen Yuan.

YIN LIN CHOW, individually and as personal representative of the estate of Thomas S. K. Chow; RICHARD CHOW, individually and as the duly appointed guardian ad litem, next friend and natural parent of his minor children LAUREN CHOW, RAYMOND CHOW and KAREN CHOW; MARY CHOW, surviving dependent major child of the decedent Thomas S. K. Chow.

TAN FAN SHAW-CHI, individually, as personal

representative of the estate of Tan Heh-Chin and as duly appointed guardian ad litem, next friend and natural parent of her minor child TAN IANG-PING.

HSU LIANG-CHUAN, individually and as personal representative of the estates of Ho Choa-O, Hsu Kin-Ling and Hsu Eng-Ling.

LEE CHU YA-PING, individually, as personal representative of the estate of Lee Hui-Shaing, and as duly appointed guardian ad litem, next friend and natural parent of her minor children LEE SHAN and LEE JIN; LEE HAN and LEE BIN, surviving dependent major children of the decedent Lee Hui-Shaing; LEE WAI-LAN and LEE WAI-CHIN, surviving dependent siblings of the decedent Lee Hui-Shaing; NG CHIN-HO, surviving dependent parent of the decedent Lee Hui-Shaing.

SHEN HO-TZU, individually, as personal representative of the estate of Wu Chien Teh, and as guardian ad litem, next friend and natural parent of her minor children WU HON-CHIH, WU MON-HEI and WU HON-SHOU.

KO YUEH-ING, individually and as personal representative of the estate of Tung Leih-Wei; PAULINE TUNG DUBOIS, TUNG CHENG-LIN, TUNG SU-LIN and TUNG CHIANG-LIN, surviving dependent major children of the decedent Tung Leih-Wei; TUNG LEIH-TOU, surviving dependent sibling of the decedent Tung Leih-Wei; NEE YU, surviving dependent parent of the decedent Tung Leih-Wei.

CHEN LIN-BEE, individually, as personal representative of the estate of Chen Tung-Sun, and as duly

appointed guardian ad litem, next friend and natural parent of the minor children CHEN HWEI-MEI and CHEN CHIN-MUN; CHEN TON-SUAN; CHEN TON-SHOW, CHEN TON-YEE and CHEN HOW, surviving dependent siblings of the decedent Chen Tung-Sun; CHEN SUAN-YAN, surviving dependent parent of the decedent Chen Tung-Sun.

WEI HSU CHU-JUN, individually and as personal representative of the estate of Wei Hon-Chen; WEI HUNG-CHU, WEI HUNG-YU and WEI TIN-LIN, surviving dependent siblings of the decedent Wei Hon-Chen.

WU CHIN-KOU, individually, as personal representative of the estate of Wu Chun-Mei, and as duly appointed guardian ad litem, next friend and natural grandparent of his minor grandchildren CHANG CHANG-HSIEN and CHANG KUN-HUI; WU MING SHUN, WU MING RE, WU MING KIN-FU, WU MING I and WU SU-HEI, surviving dependent siblings of the decedent Wu Chun-Mei; WU KEN, surviving dependent relative of the decedent Wu Chun-Mei.

CHEN JENG-EI, individually, as personal representative of the estate of Chen Chei-Po, and as duly appointed guardian ad litem, next friend and natural parent of her minor child CHEN FOU-MEI; CHEN JEN-CHAN, CHEN JEN-JA and CHEN JOU-CHU, surviving dependent major children of the decedent Chen Chei-Po; CHEN CHEI-TO and CHEN CHING, surviving dependent siblings of the decedent Chen Chei-Po; CHEN MING-ER, surviving dependent parent of the decedent Chen Chei-Po.

HUANG LIU SHOEI-LII, individually, as per-

sonal representative of the estate of Huang Lung-Chou, and as duly appointed guardian ad litem, next friend and natural parent of her minor children HUANG CHUAN YI, HUANG CHUAN MON and HUANG LI-FONG; HUANG TAI-JOH, HUANG CHUNG NON, HUANG CHUNG NAN and LIN HUANG HSIU-MIN, surviving dependent siblings of the decedent Huang Lung-Chou; HUANG JIANN-CHANG and HUANG CHANG-FONG, surviving dependent parents of the decedent Huang Lung-Chou; LIU CHING-TIEN, LIU LIN-CHO and HUANG WEOU, surviving dependent relatives of the decedent Huang Lung-Chou.

CHUNG HENG-TEH, individually, as personal representative of the estate of Chung Lin-Ying, and as duly appointed guardian ad litem, next friend and natural parent of his minor children CHUNG CHUN HSIUNG and CHUNG CHUN-MING; CHUNG CHUN-LANG and CHUNG LIN-HUI, surviving dependent siblings of the decedent Chung Lin-Ying; CHUNG CHAO-WEI, surviving dependent parent of the decedent Chung Lin-Ying; CHUNG KO LIEN-TUI, surviving dependent grandparent of the decedent Chung Lin-Ying.

LIN HUNG MEI-LENG, individually, as personal representative of the estate of Lin Wu-Yi, and as duly appointed guardian ad litem, next friend and natural parent of her minor children LIN WEN JI, LIN SAN-PIN and LIN LIN-WEN; LIN TE-CHIN, LIN CHI-FA, LIN CHIN-CHON, LIN CHIN-LUNG, LIN PEI-FON and LIN CHIN-HWA, surviving dependent siblings of the decedent Lin Wu-Yi.

CHANG KUN-YUAN, individually, as personal

representative of the estate of Shieh Ta-Ping, and as duly appointed guardian ad litem, next friend and natural parent of her minor child SHIEH CHUNG-TSE; NIIOKA TAMAMI, surviving dependent sibling of the decedent Shieh Ta-Ping; MIYAUCHI HIKARI and MIYAUCHI KANAKO, surviving dependent parents of the decedent Shieh Ta-Ping.

HUNG YU-SHIN, individually, as personal representative of the estate of Hung Mei-Chu, and as duly appointed guardian ad litem, next friend and natural parent of his minor children HUNG JUA-FUN, HUNG MING-YI and HUNG JUN-HON; HUNG TIN-MEI, surviving dependent parent of the decedent Hung Mei-Chu; HUNG CHANG SU, surviving dependent grandparent of the decedent Hung Mei-Chu.

YEN CHEN-PIEN, individually and as personal representative of the estate of Yen Jen-Chun; YEN SHE-SHON, YEN SHE-CHUNG, YEN SU-CHU and YEN SU-MEI, surviving dependent major children of the decedent Yen Jen-Chun; YEN CHEN-HOEI, YEN KEI, YEN JOUEI, YEN CHI-CHE, YEN CHOU and YEN CHON-NOUN, surviving dependent siblings of the decedent Yen Jen-Chun; YEN SON-SOU and YEN FU-HEN, surviving dependent parents of the decedent Yen Jen-Chun.

HUNG CHUN HEI-MEI, individually, as personal resentative of the estate of Sun Liu Shou-Wuei, and as duly appointed guardian ad litem, next friend and natural parent of her minor children HUNG JEE-CHUNG and HUNG DOU-KOUNG; HO YEN-TEN, individually and as duly appointed guardian ad litem, next

friend and natural parent of her minor child HUNG YU-SEN; HUNG FU, HUNG MIN-TAN, HUNG ING-ING and HUNG HWUA, surviving dependent siblings of the decedent Hung Ming-Yi; HUNG LIU YU, surviving dependent mother of the decedent Hung Ming-Yi.

SUN LIU HUANG, individually, as personal representative of the estate of Sun Liu Shou-Wuei, and as duly appointed guardian ad litem, next friend and natural grandparent of her minor grandchild SUN LIU CHIH-HAN; SUN LIU WUAN-KEE, SUN LIU SHOU-O and SUN LIN SHOU-CHIN, surviving dependent siblings of the decedent Sun Liu Shou-Wuei.

SOO JIN SZE, individually, as personal representative of the estate of James Nee Sze, and as duly appointed guardian ad litem, next friend and natural parent of her minor children, Eric Sze, Steve Sze and Angela Sze; SZE CHENG WEI and SZE CHENG BENG, surviving major dependent siblings of the decedent James Nee Sze.

MARGARET RIPPIN, surviving widow and personal representative of the estate of Dennis Rippin; JULIAN RIPPIN; STANLEY RIPPIN and ANDREW RIPPIN, surviving dependent major children of the decedent, Dennis Rippin.

The following additional parties although not parties to the proceedings below are claimants and thus interested parties:

TAI LI CHEN, individually, as surviving spouse of Liao Han-Ghang, and as duly appointed guardian ad

litem, next friend and natural parent of her minor child, LIAO PEI-WEN;

YING-CHIUEN WANG, surviving father of decedent, John Wang; Y. L. WANG, surviving mother of decedent John Wang; LINDA WANG and NELLIE LIN, surviving major siblings of the decedent, John Wang.

FRANCES MARRS, individually, as surviving spouse, and as personal representative of the estate of Gerald Brooks Marrs, Jr.

—Plaintiffs-Appellants-Petitioners

THE BOEING COMPANY
AND UNITED AIRLINES, INC.,
—Defendants-Appellees-Respondents

David W. Robertson

DAVID W. ROBERTSON
Attorney for Plaintiffs-Appellants-Petitioners

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No.

In The
Supreme Court of the United States

OCTOBER TERM, 1983

LUI SU NAI-CHAO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LUI CHO-PON DECEASED, ET AL.,

Petitioners,

VERSUS

THE BOEING COMPANY, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to The United States Court of Appeals For the Ninth Circuit

PETITION FOR CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Lui Su Nai-Chao, et al., petitioners, pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit. That decision upheld the *forum non conveniens* dismissal of petitioners' and related wrongful death actions against United States corporations based on violations of United States law.

OPINIONS BELOW

Court of Appeals opinion: *Sub. nom:* Cheng v. Boeing Co., 708 F.2d 1406 (9th Cir. 1983).

District Court opinion: Nai-Chao v. Boeing Co., 555 F. Supp 9 (N.D. Cal. 1982).

JURISDICTION

The decision of the Court of Appeals was rendered on June 20, 1983. That Court denied a timely petition for rehearing on July 21, 1983 (see Appendix D, p. 75).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND TREATIES INVOLVED

The following excerpts from statutory and treaty provisions are reproduced verbatim in Appendix E, p. 76:

Federal Aviation Act, 49 U.S.C. §§ 1423, 1425, 1428-1430.

Taiwan Relations Act, Pub. Law 96-8 (1979):
Sec. 4(b)7, 93 Stat. 15, 16 [22 U.S.C. § 3303(b)(7)];
Sec. 4(c), 93 Stat. 16 [22 U.S.C. § 3303(c)];
Sec. 15(2), 93 Stat. 20, 21 [22 U.S.C. § 3314(2)].

Treaty of Friendship, Commerce and Navigation Between The United States of America and the Republic of China (1948), 63 Stat. 1300, 1305-1306, Art. VI, § 4.

STATEMENT OF THE CASE

On August 22, 1981, a Boeing 737 jetliner, Serial # B-2603, exploded in midair at 22,000 feet over Taiwan, killing 104 passengers and six crew members.

Four of the deceased passengers were U.S. citizens.[1] The plane was operated by Far Eastern Air Transport Corporation ("FEAT"), a Taiwanese corporation. It was on a domestic flight within Taiwan.

Petitioners are 514 personal representatives and survivors[2] of 76 deceased passengers who sought wrongful death recovery in the United States District Court for the Northern District of California. There are

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[1] The Trial court mistakenly found that only one passenger was an American citizen. 555 F. Supp. at 10. This mistake was based on erroneous representations by defendant, who repeated the error in their appellate brief. These representations were not corrected by defendants until Boeing's April 8, 1983, letter to the 9th circuit. (Appendix G, p. 90).

The four American passengers were Richard Mark Clowes, Harry Grossman, Frank Servin, and Gerald Marrs, Jr. Clowes' parents' suit was part of this action. Grossman's widow and children also sued in the United States District Court for the Northern District of California, but this suit was not consolidated with the other litigation. Instead, counsel stipulated to be bound by the result of the consolidated cases. Servin's and Marrs' widows sued in California state court. Boeing's defense of these suits without asserting *forum non conveniens* is highly significant. (The Marrs suit was brought after the appeal in the consolidated cases but before oral argument.)

On November 23, 1982, the 7th Circuit Court of Appeals decided *Macedo v. Boeing Co.*, 693 F.2d 683, reversing *forum non conveniens* dismissal of air crash litigation principally because of the presence of American plaintiffs and decedents. When that opinion came out, Boeing made a concerted effort to settle the American citizen claims in this litigation, and four days before oral argument in the Ninth Circuit informed the Court in the aforementioned 4/8/83 letter of the settlements that had been achieved. (Appendix G, p. 90). Ninth Circuit's conclusion that "all California state litigation arising out of this aircrash has been settled or dismissed," 708 F.2d at 1412, however, was erroneous. The Marrs claim is still pending.

[2] The enumeration of plaintiffs in this Petition includes represented minors designated as such in the pleadings.

still 9 pending claims brought by U.S. citizens and 12 pending claims brought by U.S. permanent residents.[3]

Defendants in these actions are two United States corporations,[4] The Boeing Company ("Boeing") and United Airlines, Inc. ("United")[5]. Jetliner B-2603 exploded because cracks in the hull of the plane caused its body to rupture under pressurization.[6] The Federal Aviation Administration documented that 154 Boeing 737 planes in commercial airline operations in the U.S. and abroad had 237 instances of similar defects.[7] Boeing manufactured jetliner B-2603 and sold it to United in 1969. United sold it and other 737's to FEAT in 1976. Before the sale to FEAT, both Boeing and United

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[3] To the extent that plaintiff's citizenship and residency are significant to *forum non conveniens* determinations, there is no basis for distinguishing between American citizens and permanent resident aliens. *Abiaad v. General Motors Corp.*, 538 F. Supp. 537, 541 (E.D.Pa. 1982). See also *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256, 102 S.Ct. 252, 266, n. 23 (1981) ("citizens or residents deserve somewhat more deference. . . .")

The U.S. citizen and U.S. permanent residents are identified in Appendix F. Most, but not all, were identified in the exchange of correspondence submitted to the Ninth Circuit and contained in Appendix F.

The Ninth Circuit's statement that there were only seven U.S. citizens and four U.S. permanent resident claimants, 708 F.2d at 1408, was wrong. Before the settlements referred to in footnote 1, there were at least an additional six U.S. citizen claimants.

[4] In some of the companion cases, FEAT was also a defendant.

[5] Boeing and United were both incorporated in Delaware. Boeing's principal place of business is Seattle; United's is Chicago.

[6] 708 F.2d at 1408.

[7] *Id.*

knew of the "cracking" defect in this and other planes.[8] On the basis of these facts, petitioners asserted that Boeing and United are liable for violations of the Federal Aviation Act, 49 U.S.C. §§ 1423, 1425, 1428-1430, for negligence, and on the basis of the American law of strict liability in tort for defective products.

Defendants moved the district court to dismiss these cases on the basis of *forum non conveniens*, contending these cases should be tried in Taiwan. The district court refused to permit plaintiffs to conduct any discovery directed to the *forum non conveniens* issues, and granted defendants' motion. The court said *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252 (1981), "*mandates* the dismissal of these actions." [9] It found support in *Piper* for: (1) emphasis on the court's need to control its own docket as the first of the "public interest" factors to be considered in the *forum non conveniens* balancing process;[10] (2) rejecting petitioners' argument that the strong United States interest in deterring U.S. manufacturers from the worldwide distribution of dangerously defective products was a factor justifying retention of jurisdiction;[11] (3) de-emphasizing the importance of the presence of United States plaintiffs in this action.[12] The district court ultimately relied on its own crowded docket as the factor that caused

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[8] 555 F. Supp. at 12, n. 4. In addition, the Court of Appeals relied on Piper as confining appellate review to a cursory search for a "clear abuse of discretion."

[9] 555 F. Supp. at 11; emphasis added. The Court also stated: "*Reyno* is dispositive of Boeing's motion to dismiss. . . ." *Id.* at 13.

[10] *Id.* at 19.

[11] *Id.* at 20.

[12] *Id.*

"the balance [to tip] decidedly against the plaintiffs' choice of forum,"[13] holding:

> "[D]efendants have satisfied the [forum non conveniens] standard . . . by making a 'clear showing' that 'trial in the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' and thus it is not necessary for defendants to establish 'such oppression and vexation * * * as to be out of proportion to the plaintiff's convenience.' "[14]

The Court of Appeals affirmed the trial court's denial of all discovery.[15] It affirmed the trial court's dismissal of these actions on the view that the *Piper* decision limits review to a "clear abuse of discretion" standard.[16] The Court of Appeals expressly approved *forum non conveniens* dismissal, "even when the private conveniences of the litigants are nearly in balance," provided the district court has found "that retention of jurisdiction would be unduly burdensome to the community. . . ."[17]

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[13] *Id.* at 19.

[14] *Id.* at 21-22, quoting in part from *Paper Operations Consultants International Ltd. v. S/S Hong Kong Amber*, 513 F.2d 667, 670 (9th Cir. 1975).

[15] 708 F.2d at 1412. The Court of Appeal stated that plaintiff "ordinarily" should be permitted limited discovery and not be forced to rely on defendants' affidavit, but found no "abuse of discretion."

[16] *Id.* at 1409.

[17] *Id.* at 1411, quoting from *Pain v. United Technologies Corp.*, 637 F.2d 775, 791-92 (D.C. Cir. 1980), *cert. den.*, 454 U.S. 1128, 102 S. Ct. 980 (1981).

REASONS FOR GRANTING THE WRIT

I. Certiorari Should be Granted to Establish That a United States District Court Lacks Discretion Under "Forum Non Conveniens" to Dismiss Cases Because of its Own Congested Docket and to Resolve Conflict Among the Circuits on This Point.

Both courts below thought *Piper Aircraft Co. v. Reyno, supra*, supports central emphasis on the crowded docket of the federal court as a primary factor supporting *forum non conveniens* dismissal.[18] This approach yields an unjust result in the present case,[19] and signals confusion about the meaning of the *Piper* decision that only this Court can correct. Certiorari should be granted to correct this mistaken application of Piper by an influential Court of Appeal, and to resolve conflict with the courts of other circuits. The issue is the applicability of a legal doctrine that can totally deny plaintiffs a hearing on the merits. The conflict and confusion are not likely to be eliminated by further litigation in the lower courts, because the difficulties inhere in the *Piper* opinion itself.

A. Piper Aircraft Co. v. Reyno, And Its Use by the Courts Below

Piper was an action by Scottish plaintiffs for wrongful deaths of Scottish nationals occurring aboard a small charter aircraft in Scotland. Defendants were the American manufacturers of the plane and propeller.

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[18] 555 F. Supp at 19, 20, 21-22; 708 F.2d at 1411.
[19] 708 F.2d at 1409.

The official British investigation of the crash found no product defects, and pointed to pilot error as the cause of the crash.[20] Litigation was ongoing in Britain against the pilot's estate, the owner, and the operator of the aircraft. The district court dismissed the action, and the Court of Appeals for the Third Circuit reversed. Certiorari was granted in *Piper* on one point only—whether the Court of Appeals was wrong in concluding that *forum non conveniens* dismissal is never appropriate when the law of the alternative forum is less favorable to the plaintiff. All seven Justices participating in *Piper* agreed that the Third Circuit should be reversed on that point.

Over three dissents, the four-member *Piper* plurality went beyond the matter on which certiorari was granted to discuss the standard of appellate review and the application of the traditional "private interests" and "public interest" *forum non conveniens*. All three dissenters doubted the wisdom of that exercise. Two of the dissenters express doubt as to the correctness of dismissing suits against U.S. defendants who made the product in this country.[21]

In at least two major respects the *Piper* opinion creates serious difficulties for any principled administration of *forum non conveniens* law by the lower federal courts. First, it gave aid and comfort to the emphasis in the courts below on the courts' own docket-congestion concerns as a *forum non conveniens* factor sometimes sufficient in itself to support dismissal. The

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[20] 454 U.S. 235, 239, 102 S. Ct. at 257.

[21] Dissent by Justice Stevens, joined by Justice Brennan, 454 U.S. at 261-262, 102 S. Ct. at 269. See also Friendly; "Indiscretion About Discretion," 31 Emory L.J. 747, 751 (1982).

Piper opinion suggested that American courts are already too attractive to foreign plaintiffs,[22] emphasized that our courts are congested,[23] and stated that an "enormous commitment of judicial resources . . . would inevitably be required if the case were to be tried here."[24] Seizing upon this approach, the district court below stated that the present case would be even more difficult to try than *Piper*,[25] stressed the congestion of its own docket[26] and held:

> "The Court finds that defendants have satisfied the [*forum non conveniens*] standard . . . by making a 'clear showing' that 'trial in the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' and thus it is not necessary for defendants to establish 'such oppression and vexation * * * as to be out of proportion to the plaintiff's convenience.' "[27]

The Court of Appeals explicitly approved the district court's holding that the court's own docket concerns can tip the balance in favor of dismissal, even when the balance-of-convenience showing normally required of defendants seeking *forum non conveniens* dismissal has not been made, stating:

"[E]ven when the private convenience of the liti-

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[22] "The American courts, which are already extremely attractive to foreign plaintiffs, would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts." 454 U.S. 235, 252, 102 S. Ct. at 263-64.

[23] *Id.*

[24] 454 U.S. at 261, 102 S. Ct. at 268.

[25] 555 F. Supp. at 20.

[26] *Id.* at 19.

[27] 555 F. Supp. at 21-22, qouting in part from *Paper Operations Consultants International, Ltd. v. S/S Hong Kong Amber*, 513 F.2d 667, 670 (9th Cir. 1975).

> gants are nearly in balance, a trial court has discretion to grant *forum non conveniens* dismissal upon finding that retention of jurisdiction would be unduly burdensome to the community. . . .' "[28]

As Judge Henry Friendly has written, principled *forum non conveniens* law is threatened by this kind of emphasis on docket-control concerns.

> "[T]he explosion of litigation has created a strong incentive for district courts to shunt burdensome litigation elsewhere.[29]
>
> * * *
>
> [I]n these days of crowded dockets there is an inevitable risk of some degree of subconscious bias when decision whether to dismiss a case because of *forum non conveniens* is made by the judge who will have to try it if the motion is denied."[30]

In the present case, we have an instance of open acknowledgement by the trial judge of the power of this "strong incentive," and of open approval by the Court of Appeals of central reliance thereon. Certiorari should be granted to make clear that it is not an approved incentive.[31]

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[28] 708 F.2d at 1411, quoting from *Pain v. United Technologies Corp.*, 637 F.2d 775, 791-92 (D.C. Cir. 1980), *cert. den.*, 454 U.S. 1128, 102 S. Ct. 980 (1981). The Court of Appeal also stated that *forum non conveniens* permits a court to decline jurisdiction for "prudential reasons." 708 F.2d at 1409.

[29] Friendly, "Indiscretion About Discretion," 31 Emory L.J. 747, 750 n. 10. (1982).

[30] *Id.* at 754.

[31] See also Note, "The Convenient Forum Abroad Revisited: A Decade of Development of the Doctrine of Forum Non Conveniens in International Litigation in the Federal Courts," 17 Va. J. Int. L. 755, 791 (1977), stating that we badly need clarification on "whether a court may grant an FNC motion solely for its own convenience."

The second difficulty created by *Piper* is its statement and application of the "clear abuse of discretion" standard of appellate review.[32] In the present case, that portion of *Piper* was the Court of Appeals' central support.[33] Review was cursory, as evidenced by the summary nature of the Court of Appeals opinion, by the Court's rather casual reference to declining jurisdiction "for prudential reasons,"[34] and by the Court's totally ignoring petitioners' argument on behalf of a strong U.S. interest, appropriate to *forum non conveniens* determinations, in deterring U.S. manufacturers from the worldwide distribution of dangerously defective aircraft.

Judge Friendly has been very critical of the *Piper* emphasis on the "clear abuse of discretion" review standard as applied in that case, stating: "I do not regard the rule of obeisance in the extreme form laid down by the *Piper majority as a healthy one.*"[35] In Judge Friendly's view, there is obvious need for the consistent application of clear principles of decision in *forum non conceniens* cases,[36] and abdication of meaningful

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[32] 454 U.S. at 257, 102 S. Ct. at 266.

[33] 708 F.2d at 1409.

[34] *Id.*

[35] Friendly, *supra* note 29, 31 Emory L.J. at 754. Judge Friendly states that *Piper* required much more than the "substantial deference" ordinarily associated with *forum non conveniens* review. *Id.* at 751. Elsewhere in the article, he cites *Piper* as an arguable instance of "the danger that an inadequately articulated opinion may do more to engender than to diminish confusion." *Id.* at 758, n. 35.

[36] 31 Emory L.J. at 769-71.

appellate review guarantees inconsistency among the more than 500 federal trial judges now sitting.[37]

Meaningful appellate review did not occur in the present case. In the process, much settled *forum non conveniens* law was ignored or lost sight of. (See Part I-B of this Petition, *infra*.). Certiorari should be granted to correct the difficulties engendered by the controversial portions of *Piper*, and to reaffirm those settled *forum non conveniens* principles that do lead to principled and acceptably consistent determinations by the lower courts.

B. Gilbert, Koster, Piper and the Present Case

In their use of *Piper* as support for the docket-control emphasis, the courts below ignored crucial language from the uncontroversial portion of that opinion and crucial principles of the settled law of *forum non conveniens*. *Piper* reaffirmed the traditional *forum non conveniens* balancing process originally articulated in this Court's 1947 *Gilbert*[38] and *Koster*[39] decisions.[40] Both "private interest" factors and "public interest" factors must be balanced.[41] The trial court is not entitled to deference unless all relevant factors have been considered.[42] The traditional presumption favoring

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[37] *Id.* at 758.

[38] *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 67 S. Ct. 839 (1947).

[39] *Koster v. Lumbermen's Mutual Casualty Co.*, 330 U.S. 518, 67 S. Ct. 828 (1947).

[40] *Piper*, 454 U.S. at 241, 102 S. Ct. at 258.

[41] *Id.*

[42] 454 U.S. at 257, 102 S. Ct. at 266: [W]here the [district] court has considered *all* relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference." (Emphasis added.) See also 454 U.S. at 249-250, 102 S. Ct. at 262 (wrong to emphasize any one *forum non conveniens* factor).

plaintiffs' forum choice is itself a factor entitled to independent weight in the balancing process.[43] The *Piper* opinion explicitly states that *forum non conveniens* dismissal is not appropriate unless "trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, *and* . . . the plaintiff is unable to offer any specific reasons of convenience supporting his choice."[44]

Despite being severely handicapped by the district court's refusal to permit any discovery, petitioners were able to demonstrate a number of "specific reasons of convenience" supporting U.S. forum jurisdiction and rejecting the reasonableness of forcing plaintiffs to litigate in Taiwan.[45] (1) Most of the liability witnesses are in the United States.[46] (2) All of the significant wreckage of the jetliner was in the United States for testing by the National Transportation Safety Board and Boeing, but Boeing removed most of it to Taiwan during the pendency of this litigation. (3) A U.S. court will certainly do a better job of applying U.S. law than a Taiwanese court.[47] (4) Taiwan's courts require a plaintiff to

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[43] 454 U.S. at 244, 255-56, 102 S. Ct. at 260, 265-66.

[44] 454 U.S. at 249, 102 S. Ct. at 262. Emphasis added.

[45] The decision of the courts below conflicts with other post-*Piper* decisions of other Courts of Appeals and other panels of the Ninth Circuit on the importance and proper treatment of many of these "private interest" points. See notes 47-49, 53-55, *infra*.

[46] Boeing admitted in an affidavit that virtually all of its witnesses are based in the U.S. See Appendix L, p. 155. The U.S. Government officials who participated in the investigation of the aircraft explosion are also in the U.S.

[47] Both lower courts assumed that U.S. law would control the case, even in Taiwan courts. 555 F. Supp. at 16-17; 708 F.2d at 1410-11. (The district court later stated it "is quite possible that Chinese law would be applied to this action." 555 F. Supp. at 21.)

Post-*Piper* decisions of other circuits stress the applicability of U.S. law as an important factor favoring retention of jurisdiction: *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339 (8th Cir. 1983);

post a cash deposit of 1% of the amount of the claim as a prerequisite to filing suit.[48] (5) Trial by jury is not available in Taiwan.[49] (6) According to the sworn evidence of two experienced Taiwanese judges, Taiwan's courts will simply not accept jurisdiction in these cases.[50] (7) By federal law Taiwanese citizens are guaranteed access to U.S. courts,[51] but there is no evidence of any corresponding guarantee by Taiwan that U.S. citizens

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La Seguridad v. Transytur Line, 707 F.2d 1304, 1310 (11th Cir. 1983); *De Oliveira v. Delta Marine Drilling Co.*, 707 F.2d 843, 845 (5th Cir. 1983); *American Rice, Inc. v. Arkansas Rice Growers*, 701 F.2d 408, 417 (5th Cir. 1983); *Bailey v. Dolphin International, Inc.*, 697 F.2d 1268, 1274 (5th Cir. 1983); *Vaz Borralho v. Keydril Co.*, 696 F.2d 379, 384 (5th Cir. 1983); *Gahr Development v. Nedlloyd Lijnen, B.V.*, 542 F. Supp. 1224, 1227 (E.D.La. 1982); *Lake v. Richardson-Merrell, Inc.*, 538 F. Supp. 262, 273-76 (N.D. Ohio 1982).

[48] The courts below found this factor to be insignificant. 555 F. Supp. at 16-17; 708 F.2d at 1410. Other post-*Piper* decisions are in conflict: *Lehman v. Humphrey Cayman, Ltd.*, n. 47, *supra; Macedo v. Boeing Company*, 693 F.2d 683, 688 (7th Cir. 1982); See especially the Ninth Circuit's own decision in *Raffaele v. Compagnie Generale Maritime*, 707 F.2d 395, 398-99 (9th Cir. 1983).

[49] See Appendix M, p. 157. Several post-*Piper* decisions of other courts have relied upon this factor as supporting retention of U.S. jurisdiction. *Lehman*, *supra*, n. 47; *Macedo*, *supra*, n. 48, 693 F.2d at 687.

[50] See Appendix K, p. 127. The district court did not believe the evidence of these two judges, relying instead on the affidavit of defendant's Chinese-law expert, a young attorney. 555 F. Supp. at 15-16. However, the court suggested that dismissal should include the proviso that plaintiffs can refile their American action if the foreign court refuses jurisdiction. 555 F. Supp. at 15, n. 8, but did not include that proviso in its order, 555 F. Supp. at 22, or the judgment of dismissal, Appendix C at p. 72.

[51] Article VI, sec. 4 of the 1948 Treaty of Friendship, Commerce and Navigation between the U.S. and Taiwan (Appendix E, p. 76). On the abrogation of the treaty, Congress passed the Taiwan Relations Act (Appendix E, p. 76), which continued the Treaty's guarantee of access by Taiwan nationals to U.S. courts. See also *Chang v. Northwestern Memorial Hospital*, 506 F. Supp. 975 (N.D. Ill. 1980).

will enjoy access to Taiwan's courts.[52] (8) The record is thus extremely dubious as to whether any plaintiffs, and particularly the American, Canadian, Brazilian, and Japanese plaintiffs, can gain access to Taiwan's courts. (9) Defendants made no showing and the record is silent as to the availability of compulsory process for the attendance of witnesses and discovery in Taiwan.[53] (10) The record is silent as to whether Taiwan's courts have ever entertained a products liability action,[54] and as to the availability of wrongful death damages in Taiwan. (11) Petitioners also showed that in several related state-court cases arising out of the explosion of Boeing Jetliner B-2603, Boeing was defending without seeking *forum non conveniens* dismissal.[55] This showing demonstrated that Boeing's present motion is purely defensive tactics, not a genuine "inconvenient forum" motion; awarding success to that strategy is fundamentally inconsistent with the purposes of *forum non conveniens*,[56] with the obvious U.S. interest in insisting that U.S. manufacturers of products intended for worldwide dissemination comply with the safety requirements of U.S. law, and with fundamental fairness.

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[52] The Court of Appeals refused to consider this argument, stating that plaintiffs did not raise it in the district court. 708 F.2d at 1411.

[53] The importance of these factors was stressed in *Lehman*, *supra*, n. 47, and *Macedo*, *supra*, n. 48, 693 F.2d at 687-88.

[54] Compare *Macedo*, *supra*, n. 48, 693 F.2d at 688.

[55] The importance of defendants' conduct of related litigation as bearing on the genuineness of the *forum non conveniens* motion is stressed in the Seventh Circuit's *Macedo* decision, *supra*, n. 48, 693 F.2d at 689-90. In refusing to consider it, the courts below placed the Ninth Circuit in conflict with the Seventh Circuit on this issue.

[56] See Note, "Forum Non Conveniens and Foreign Plaintiffs in the Federal Courts," 69 Geo. L.J. 1257, 1258-59 (1981).

Judge Henry Friendly states that in *Koster v. Lumbermen's Mutual Casualty Co.*,[57] this Court established a rule of law that should be at the core of *forum non conveniens* determinations:[58] plaintiff's forum choice should not be disturbed unless he makes so poor a "convenience" showing "as to support the inference that the forum he chose would not ordinarily be thought a suitable one to decide the controversy."[59] *Piper*'s indication that plaintiffs' choice should not be disturbed unless he "is unable to offer any specific reasons of convenience supporting his choice"[60] seems to state the same rule. Plainly that rule supports petitioners' choice of a United States forum in the present case. The Northern District of California is not a forum that "would not ordinarily be thought a suitable one" for these actions, and plaintiffs made the "specific showing of convenience" called for by *Piper*. Certiorari should be granted to establish that plaintiffs should not be relegated to a distant and foreign forum in the face of such a showing.

C. Conflict Among the Circuits

The courts of other circuits disagree with the decision below as to the impact of *Piper*.[61] A number of decisions from other circuits, decided since the *Piper* opinion was handed down, have painstakingly analyzed the "private interest" factors in an effort to arrive at a conclusion whether defendants' "convenience" showing

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[57] 330 U.S. 518, 67 S. Ct. 828 (1947).
[58] Friendly, *supra*, n. 21, 31 Emory L.J. at 751.
[59] 330 U.S. at 531-32, 67 S. Ct. at 835.
[60] 454 U.S. at 249, 102 S. Ct. at 262.
[61] See cases cited in notes 47-49, 53-55, *supra*.

should offset plaintiffs' forum choice.[62] Further, the Fifth Circuit Court of Appeals has recently stressed that careful appellate review is required in *forum non conveniens* cases[63] and emphasized that even when plaintiff can present

> ". . . no identifiable *Gilbert* factors supporting the retention of jurisdiction, plaintiffs nevertheless retain the heavy presumption in favor of their choice of forum. [Plaintiffs were all foreigners, unlike the present case.] A plaintiff's interest in this choice is *itself* sufficient to tip the scale in his favor. The burden is *always* on defendant to present a collection of convenience factors which . . . *strongly* favor trial in a specific alternative forum."[64]

The decisions below are in conflict with the Fifth Circuit decision on scope of review and on the appropriate weight to the plaintiffs' choice factor, and both courts below held, contrary to the Fifth Circuit, that defendant need not make the indicated "strong" showing when the court is concerned about its own crowded docket.[65]

On the inter-circuit conflict as to *Piper*'s effect on the legitimacy of docket-protection as a controlling *forum non conveniens* factor, see especially *Lake v. Richardson-Merrell, Inc.*, 538 F. Supp. 262 (N.D. Ohio 1982), an action by Canadian plaintiffs against U.S. manufacturers of thalidomide and bendectin for injuries

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[62] *Id.*

[63] *Perusahaan Umom Listrik Negara Pusat v. M/V Tel Aviv*, 711 F.2d 1231, 1232, 1239, 1241 n. 29, 1242 (5th Cir. 1983). Emphasis added.

[64] *Id.* at 1247. Emphasis added.

[65] 555 F. Supp. at 19-22; 708 F.2d at 1411.

caused by those products in Canada. Rejecting defendants' *forum non conveniens* motion, the court carefully analyzed the *Piper* decision—pointing out several areas of uncertainty it felt *Piper* created—and concluded after closely examining the full gamut of "private" and "public" factors that plaintiffs' forum choice should not be disturbed. The *Lake* court concluded:

> "The docket of this Court will never be so overloaded as to require the dismissal of cases legitimately and correctly brought before it. *** The factor of court administration holds little weight in determining whether to dismiss these cases for *forum non conveniens*."[66]

The *Lake* court's approach is corr ct *forum non conveniens* law, and stands in sharp contrast to the decisions below. In *Gilbert*, this Court stated that the flexibility and discretionary nature of *forum non conveniens* is acceptable because "experience has not shown a judicial tendency to renounce one's own jurisdiction so strong as to result in many abuses."[67] That comforting observation is belied by the present case.[68] If the decision below is allowed to stand, *forum non conveniens* has been transmogrified from a litigant-convenience doctrine into the preeminent defense strategy in all complex transnational litigation. As one perceptive commentator has noted:

> "American defendants have turned with increasing frequency to the *forum non conveniens* doctrine because it has proven to be an effective means to

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[66] 538 F. Supp. at 275.

[67] *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 508, 67 S. Ct. 839, 843 (1947).

[68] See also Judge Friendly, *supra*, n. 21, 31 Emory L.J. at 750, n. 10.

avoid litigating an international dispute in federal court. Although it is common practice, a purely defensive use of *forum non conveniens* as a litigation strategy conflicts with the doctrine's underlying purpose: ensuring that the defendants are protected from unnecessary inconvenience. In terms of convenience, it is not readily apparent why an American defendant would seek the dismissal of a suit brought on his own 'home turf.' "[69]

II. Certiorari Should be Granted to Establish That There is a United States Interest, Entitled to Weight in Forum Non Conveniens Determinations, in Deterring U.S. Manufacturers and Sellers From the Worldwide Dissemination of Dangerously Defective Products.

Petitioners urged the courts below to retain jurisdiction to further the obvious U.S. interest in deterring American manufacturers and sellers from distributing dangerously defective aircraft in a worldwide market. The district court read *Piper* to make that argument *entirely irrelevant.*[70] (The Court of Appeals did not address this point at all.)

The *Piper* plurality opinion stated:

"[T]he incremental deterrence that would be gained if this trial were held in an American court is likely to be insignificant. The American interest in this accident is simply not sufficient to justify the enormous commitment of judicial time and resources that would inevitably be required if the case were to be tried here."[71]

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[69] Note, *supra*, note 56, 69 Geo. L.J. at 1258-59.

[70] 555 F. Supp. at 12 n. 4, and at 20.

[71] 454 U.S. at 260-261, 102 S. Ct. at 268.

The facts that made the that statement plausible were: (1) the case involved the crash of a small charter aircraft; (2) the official investigation of the crash found no product defects, but pointed to pilot error;[72] (3) related litigation was already under way in Britain; (4) British courts were familiar with wrongful death litigation based on defective products and would apply Scottish negligence law to the American defendants.[73] It was on those facts, and those facts only, that the *Piper* "incremental deterrence" statement made sense.

The case is completely different. It involves terrifying defects in hundreds of Boeing's jetliners.[74] No pilot or maintenance error is suggested,[75] and there is and has been no related litigation pending in Taiwan. The present record does not show the availability of any wrongful death damages in Taiwan, or whether Taiwan's courts have ever entertained a death or personal injury action based on injury by a defective product.

The district court in the present case took Piper's "incremental deterrence" statement out of context; *Piper* is not legitimate support for rejecting the U.S. deterrence interest in the present facts. Nevertheless, the Court of Appeals below did not find the point important enough to comment on, beyond the general statement that "the facts in *Reyno* are sufficiently similar to the facts in the present case to support dis-

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[72] 454 U.S. at 238-239, 102 S. Ct. at 257.

[73] 454 U.S. at 239-240, 102 S. Ct. at 257-258, text and n. 3.

[74] See the Boeing product advisory, Appendix K, p. 127, for identification of the U.S. and other air carriers affected by this product defect.

[75] 708 F.2d at 1408.

missal."[76] Certiorari should be granted to correct the misunderstanding of *Piper* and to make clear that the U.S. retains its interest in preventing the manufacture and dissemination of devastatingly dangerous products in a worldwide market. In addition, certiorari on this point is necessary to resolve conflicts between the decision below and post-*Piper* decisions of the courts of other circuits.[77] Further litigation in the lower courts is not especially likely to eliminate the problem, which stems from the *Piper* "incremental deterrence" statement.

III. Certiorari Should be Granted to Clarify the Effect of the Piper Decision on the Presumption Traditionally Accorded U.S. Plaintiffs' Choice of a U.S. Forum, and to Resolve Conflicts Among the Circuits on That Issue.

Before *Piper*, most federal courts and most commentators treated the presumption favoring retention of jurisdiction in actions brought by U.S. plaintiffs as

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[76] 708 F.2d at 1410.

[77] *American Rice, Inc. v. Arkansas Rice Growers*, 701 F.2d 408, 417 (5th Cir. 1983) (affirming denial of *forum non conveniens* dismissal, emphasizing importance of applying U.S. trademark and unfair competition laws to conduct of U.S. defendant); *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339 (8th Cir. 1983) text and n. 6 (reversing *forum non conveniens* dismissal, relying in part on desirability of applying U.S. law to conduct that had a nexus here and caused harm here); *Lake v. Richardson-Merrell, Inc.*, 538 F. Supp. 262, 274-75 (N.D. Ohio 1982) (denying *forum non conveniens* dismissal motion of American products manufacturers sued by Canadian plaintiffs for Canadian injuries, relying centrally on the need to deter U.S. manufacturers, and distinguishing *Piper* on the basis that much less wrongful activity occurred in the U.S. in *Piper* than in the case before the court).

near-conclusive.[78] *Piper* involved only alien plaintiffs, but the opinion reaffirms the existence of some presumption for U.S. plaintiffs.[79]

In the present case the courts below paid lip service to the deference due U.S. plaintiffs' choice of a U.S. forum, but in fact treated that factor as insignificant, once again relying squarely on *Piper*.[80] This treatment of U.S. plaintiffs puts the present Ninth Circuit decision at odds with *Piper* and with this Court's earlier decisions in *Koster*[81] and *Swift & Company Packers*.[82] It also puts the present Ninth Circuit decision in conflict with a number of post-*Piper* decisions of other Circuit Courts of Appeals,[83] and with two post-*Piper*

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[78] See, e.g., *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 435 (D.C. Cir. 1976); Note, "Forum Non Conveniens and American Plaintiffs in the Federal Courts," 47 U.Chi. L. Rev. 373 (1980) (arguing against treating U.S. plaintiffs differently from foreign plaintiffs but acknowledging the general view to the contrary).

[79] 454 U.S. at 255-56, 102 S. Ct. at 265-66, text and n. 23.

[80] 555 F. Supp. at 21-22; 708 F.2d at 1411. *Alcoa Steamship Company, Inc. v. MV Nordic Regent*, 654 F.2d 147, 154-58 (2nd Cir.) (en banc), *cert. denied*, 449 U.S. 890, 101 S. Ct. 248, (1980) and *Pain v. United Technologies Corp.*, 736 F.2d 775, 795-99 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 1128, 102 S. Ct. 980 (1981), are significantly distinguishable. *Alcoa* involved suit against foreign defendants on a foreign cause of action. In *Pain* the U.S. product liability defendant had to admit liability "as the price for permitting it to shift the case from plaintiffs' chosen forum." (736 F.2d at 785.)

[81] *Koster v. Lumbermen's Mutual Casualty Co.*, 330 U.S. 518, 524, 67 S. Ct. 828, 831-32 (1947).

[82] *Swift & Company Packers v. Compania Colombiana del Caribe*, 339 U.S. 684, 697, 70 S. Ct. 861, 869 (1950).

[83] *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339 (8th Cir. 1983) (Iowa citizen's suit against Cayman Islands corporation

decisions of other panels of the Ninth Circuit itself.[84] Certiorari should be granted to clear up these conflicts and to establish that United States citizens and residents are entitled to a strong presumption in favor of retaining United States jurisdiction. Such a presumption should be especially weighty when defendants are United States corporations, defendants' culpable conduct occurred in the United States, and United States

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for wrongful death occurring in Cayman Islands; trial court granted *forum non conveniens* dismissal, but Court of Appeals reversed); *Macedo v. Boeing Company*, 639 F.2d 683, 688 (7th Cir. 1982) (57 plaintiffs, six of whom were Americans, against U.S. and foreign corporations for deaths occurring in Portuguese airliner crash in Portugal; trial court granted *forum non conveniens* dismissal, Court of Appeals reversed and remanded for further consideration); *American Rice, Inc. v. Arkansas Rice Growers*, 701 F.2d 408, 417 (5th Cir. 1983) (suit between U.S. corporations based on alleged violations, occurring in Saudi Arabia, of U.S. trademark and unfair competition laws; Court of Appeals affirmed trial court refusal to dismiss for *forum non conveniens*); *Nalls v. Rolls-Royce, Ltd.*, 702 F.2d 255 (D.C. Cir. 1983) (U.S. residents' suit against alien corporations for deaths in India airliner crash. Although there were no U.S. defendants and U.S. law was plainly not applicable, the trial court refused *forum non conveniens* dismissal and the Court of Appeals refused to review. The only written opinion in *Nalls* is the dissent in the Court of Appeals, which states that plaintiffs' American residence was the significant factor favoring retention of U.S. jurisdiction. 702 F.2d at 257).

[84] *Nebenzahl v. Credit Suisse*, 705 F.2d 1139, 1140 (9th Cir 1983), (reversing *forum non conveniens* dismissal of U.S. citizens' suit against Swiss banks and stating that defendant must carry an "almost impossible burden to deny a citizen access to the courts of this country"); *Raffaele v. Compagnie Generale Maritime, S.A.*, 707 F.2d 395, 398-99 (9th Cir. 1983) (reversing dismissal for want of personal jurisdiction of Oregon longshoreman's suit against West German corporation and indicating that, subject to limits imposed by traditional justice and fairness, plaintiff "has a right to enforce obligations imposed by law," and that this right would not be meaningful if plaintiff had to go to Germany to assert it).

law will be the governing law whenever the case is tried.

IV. Conclusion

The decision below is a serious injustice to the present petitioners, signals confusion and conflict among the lower courts as to the meaning of this Court's *Piper* decision, and reveals that *Piper* demands early clarification by this Court. The difficulties detailed in this Petition are not likely to be cured by further litigation in the lower courts, because the *Piper* opinion is a prime source of the trouble.

The courts below found support in *Piper* for central emphasis on the Courts' increasing concerns about docket congestion, affording only very limited appellate review of *forum non conveniens* dismissals, disregarding as entirely irrelevant the U.S. interest in subjecting U.S. manufacturers of products intended for worldwide distribution to U.S. law, denigrating the traditional presumption afforded plaintiff's forum choice, and greatly diminishing the traditional regard for the American plaintiff's choice of an American forum. This Court should grant certiorari to address those applications of *Piper*, and to eliminate the ones that constitute misunderstandings of fundamental *forum non conveniens* law. Failure to do so will mean that *forum non conveniens* is no longer a "conveniens" doctrine at all; it will have become the preeminent defensive strategy in all complex transnational litigation in the federal courts.

Petitioners urge the Court to grant certiorari, to

review this matter fully, and to establish and clarify *forum non conveniens* law in these particulars:

(1) Docket congestion is not in and of itself a legitimate *forum non conveniens* factor.

(2) Appellate courts must fully review *forum non conveniens* determinations for clear error of law, such as failing to take relevant factors into account or failing to give appropriate weight to important factors.

(3) One important "public interest" factor meriting careful consideration in any tort action against an American defendant is the U.S. interest in deterring harmful conduct by U.S. citizens and enterprises.

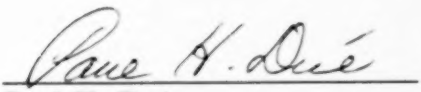
(4) Plaintiff's forum choice, absent clear indication that the chosen forum is one that would ordinarily be regarded as completely inappropriate for the trial of the action, is entitled to such presumptive weight that defendant cannot secure *forum non conveniens* dismissal except by making a fully convincing showing that trial in a foreign forum would be overwhelmingly more convenient.

(5) When plaintiff is an American citizen or resident alien, either alone or necessarily joined in an action with alien plaintiffs, and defendant is also an American citizen, resident alien, or enterprise, only the most unusual circumstances (e.g., all of the harmful conduct and all of the damage occurred abroad) can support *forum non conveniens* dismissal.

Establishment or reaffirmance of any of the foregoing propositions would necessitate reversal in the present case, and petitioners respectfully submit they

are all sound propositions deserving of adoption or reaffirmance and reemphasis.

Respectfully submitted,



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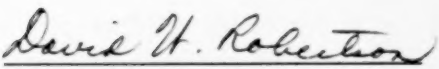

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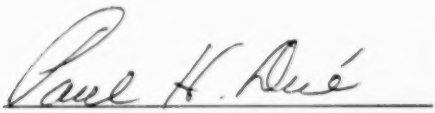
CERTIFICATE

I hereby certify, pursuant to United States Supreme Court Rule 28.3, that all counsel of record herein have been served with three copies each of this Petition by depositing same in the United States Mail, first class postage prepaid, properly addressed to counsel at his post office address.



APPENDIX A

NINA CHENG, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF THOMAS T.O. CHENG, DECEASED, ET AL.,
Plaintiffs-Appellants,
VERSUS
THE BOEING COMPANY, ET AL.,
Defendants-Appellees.

SHUNSAKU HARADA AND MASA HARADA, IN THEIR INDIVIDUAL CAPACITIES AND AS HEIRS AT LAW AND LEGAL SUCCESSORS OF AKIKO HARADA, DECEASED, ET AL.,
Plaintiffs-Appellants,
VERSUS
THE BOEING COMPANY, ET AL.,
Defendant-Appellees.

LUI SU NAI-CHA, ET AL.,
Plaintiffs-Appellants,
VERSUS
THE BOEING COMPANY, ET AL.,
Defendants-Appellees.

Nos. 82-4267, 82-4283, 82-4284 and 82-4288 to 82-4302.

United States Court of Appeals Ninth Circuit.

Argued and Submitted April 12, 1983.
Decided June 20, 1983.

Appeal from the United States District Court for the Northern District of California.

Before MERRILL, SNEED, and FARRIS, Circuit Judges.

FARRIS, Circuit Judge:

The *Cheng* and *Harada* plaintiffs brought actions

against Boeing, United Airlines, and Far Eastern Air Transport in the U.S. District Court for the Northern District of California on claims arising out of the crash of a commercial airliner in Taiwan in 1981. Defendants asserted that Taiwan was a more convenient forum and moved that plaintiffs' cause be dismissed on the ground of *forum non conveniens*. The district court granted defendants' motion. Plaintiffs appeal.

The crash involved a Boeing 737-200 operated by Far Eastern Air Transport. Boeing manufactured the plane in 1968 and United Airlines operated it within the United States until 1976, when it sold it to Far Eastern. From 1976 until the day of the crash, Far Eastern operated and serviced the aircraft. Far Eastern performed all maintenance in accordance with a program authorized by Boeing. At the time of the accident Boeing had trained 54 members of Far Eastern's maintenance staff.

The crash occurred on August 22, 1981, during an intra-Taiwan flight and killed all aboard. The airplane exploded shortly after take-off at 20,000 feet, scattering debris over a wide area of rugged terrain south of Taipei. The China Civil Aeronautics Authority, with the assistance of the U.S. National Transportation Safety Board, Boeing, and United, conducted a full-scale investigation of the accident. Much of the wreckage was taken to the United States for examination and testing but was later returned to Taiwan. It remains there, although Boeing retains some fragments.

Four days after the district court granted Boeing's motion to dismiss on grounds of *forum non conveniens*, the Taiwan Ministry of Communications announced the results of the investigation. The Authority found, *inter*

alia, that there were no eyewitnesses to the accident, that there was no pilot or crew error, that there were no maintenance defects, that there were no adverse weather conditions at the time of the crash, and that the cause of the accident was the rupture under pressure of the body of the aircraft due to cracks in its structure caused by rust and corrosion. The Authority noted that the U.S. Federal Aviation Agency had documented 237 instances of similar cracks in 154 Boeing planes of the same type.

This appeal consolidates nineteen separate wrongful death actions filed by representatives of passengers killed in the accident. The passengers included citizens of Taiwan, Japan, Canada, and the United States. At the time Boeing's motion to dismiss was argued before the district court, most of the *Cheng* plaintiffs were Taiwanese. Among the plaintiffs, however, were seven Americans and four Taiwanese residents of the United States. Boeing and United have since settled with most of these eleven plaintiffs and, at this time, only a small number of plaintiffs who are either citizens or residents of the United States remain active in this litigation. The *Harada* plaintiffs are forty-six Japanese citizens, suing in behalf of eighteen Japanese decedents.

This litigation began when the *Cheng* plaintiffs filed three complaints in the Northern District of California naming Boeing and other American corporations as defendants. At the same time they sought to depose two Boeing employees. Boeing successfully moved to quash the notices of deposition and to stay discovery pending its filing of a motion to dismiss on the ground of *forum non conveniens*.

Boeing filed a motion to dismiss or, in the alternative, to transfer the case to the Western District of Washington. Ten days later the *Harada* plaintiffs filed fifteen actions, naming Boeing, United Airlines, and Far Eastern Air Transport as defendants. On that day the district court granted Boeing's motion to quash the notices of deposition and stayed all discovery.

On January 11, 1982, the *Cheng* plaintiffs amended their complaint, adding more plaintiffs, dropping all the original defendants but Boeing, and adding United as a defendant. On January 22 Boeing and United argued the motion to dismiss on the ground of *forum non conveniens*. On March 1 Far Eastern answered the *Harada* complaint, raising *forum con conveniens* as an affirmative defense. With Boeing's and United's motion under submission, the court ordered a stay on all matters pending decision on the motion. On March 8 and 12 plaintiffs moved for leave to file additional documents or, in the alternative, for an evidentiary hearing on the pending motion. After reviewing plaintiffs' documents, the court denied the motion.

On April 13, 1982, the court granted defendants' motion to dismiss on the ground of *forum non conveniens* but conditioned the dismissal on Boeing's and United's agreement to the following four-part undertaking:

> 1. The courts of Taiwan have, and will assert, jurisdiction over these actions.
> 2. Defendants will submit themselves to the jurisdiction of the Taiwanese court, and will make their employees available to testify in Taiwan.
> 3. Defendants agree to waive any statute of limitations claims arising from the date that these actions

were filed to the date this Order dismissing the complaints becomes effective.

4. Defendants consent to satisfy any judgment that may be rendered against them in Taiwan.

The dismissal as to Far Eastern was unconditional.

STANDARD OF REVIEW

> [1] Our standard of review is narrow: The *forum non conveniens* determination is committed to the sound discretion of the trial court. It may be reversed only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference.

Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257, 102 S. Ct. 252, 266, 70 L.Ed.2d 419 (1981).

ISSUE

The only issue is whether the district court abused its discretion in dismissing these cases on the ground of *forum non conveniens*. We affirm.

ANALYSIS

Whether the district court abused its discretion by granting defendants' motion to dismiss on the ground of *forum non conveniens* depends on the application to the facts of this case of the doctrine which the Supreme Court enunciated in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), and *Piper Aircraft C. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981). The district court found that the facts in *Reyno* were sufficiently analogous to the facts

in this case to justify dismissal on grounds of *forum non conveniens*. Plaintiffs argued on appeal that there are sufficient differences between the two cases to justify a contrary result in the case now before us and that the district court's failure to recognize the consequences of these differences was an abuse of discretion.

[2, 3] The doctrine of *forum non conveniens* permits a court to decline to exercise its jurisdiction for prudential reasons. Although 28 U.S.C. § 1404(a) codifies the rule of *forum non conveniens* when the choice is between alternative forums within the United States, the common law governs when it is a choice between a United States and a foreign forum. *Paper Operations Consultants International, Ltd. v. SS Hong Kong Amber*, 513 F.2d 667, 670 (9th Cir.1975). When a court decides in its discretion that a case before it should more appropriately be tried in a foreign forum, it may dismiss the case. *Miskow v. Boeing Co.*, 664 F.2d 205, 208 (9th Cir. 1981), *cert. denied*, 455 U.S. 1020, 102 S.Ct. 1717, 72 L.Ed.2d 138 (1982).

In *Gulf Oil v. Gilbert* the Supreme Court set forth the factors which a trial court must consider in ruling on a motion to dismiss on the ground of *forum non conveniens*. The Court enumerated both the "private interest factors" affecting the convenience of the litigants and the "public interest factors" affecting the convenience of the forum. The private interest factors include "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical prob-

lems that make trial of a case easy, expeditious and inexpensive." 330 U.S. at 508, 67 S.Ct. at 843. The public interest factors include the administrative difficulties flowing from court congestion; the local interest in having localized controversies resolved at home; the interest in having the trial of a diversity case in a forum that is familiar with the law that must govern the action; the avoidance of unnecessary problems in conflicts of law, or in application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty. *Id.* at 508-09, 67 S.Ct. at 843.

The Court in *Gilbert* noted that the plaintiff's choice of forum should not be disturbed "unless the balance is strongly in favor of the defendant." *Id.* at 508, 67 S.Ct. at 843. We have recently indicated that the standard to be applied is whether, in light of these factors, defendants have made a "clear showing of facts which either (1) establish such oppression and vexation of a defendant as to be out of proportion to the plaintiff's convenience, which may be shown to be slight or nonexistent, or (2) make trial in the chosen forum inappropriate because of considerations affecting the court's own administrative and legal problems." *Miskow v. Boeing Co.*, 664 F.2d at 208, *quoting Hoffman v. Goeberman*, 420 F.2d 423, 426-27 (3d Cir. 1970).

In *Reyno* the representative of the estates of several Scottish citizens killed in an airplane accident in Scotland brought wrongful death actions in a California state court against two American manufacturers. The defendants then removed to federal court and the action was transferred to the Middle District of Pennsylvania. At the time of the crash the plane was registered in

Great Britain and owned and operated by companies organized in the United Kingdom. The pilot and all the decedents' heirs and next of kin were Scottish citizens. British authorities conducted the investigation of the accident. Decedents' representatives sought to recover on the basis of negligence or strict liability, the latter not recognized by Scottish law.

We agree that the facts in *Reyno* are sufficiently similar to the facts in the present case to support the district court's conclusion that Taiwan was the more appropriate forum. We find no abuse of discretion.

Existence of an adequate alternative forum

The district court began its analysis with a determination that Taiwan was an adequate alternative forum, as required by *Reyno*. 454 U.S. at 254, n. 22, 102 S.Ct. at 265 n. 22. The *Cheng* appellants challenged the basis of that determination, arguing that Taiwan was not an adequate forum because (1) a Taiwan court would not have jurisdiction, (2) the filing fee requirements of a Taiwanese court would be burdensome, and (3) the American law which would govern these actions would pose difficulties for a Taiwanese court. The *Cheng* appellants offered affidavits of two Chinese legal authorities in support of these arguments, while Boeing offered the opinion of one expert rejecting these arguments. The trial court considered the affidavits and decided that the view of Boeing's expert were more persuasive.

The court rejected all of plaintiffs' arguments, finding that a Taiwan court would have jurisdiction over these cases, that the requirement of a filing fee, although a burden, was not sufficient to deny plaintiffs

access to a Taiwanese court, particularly since they did-not show that the burden was oppressive; and that Taiwan courts were fully competent to decide questions of American law, assuming American law to apply.

Plaintiffs complain that the district court's finding that Taiwan was an adequate alternative forum was unsupported by the evidence and that the court improperly transformed the affirmative burden on Boeing of showing that an alternative forum existed into a negative burden on them to demonstrate that the forum proposed by Boeing was not adequate. Plaintiffs cite post-*Reyno* cases for the propositions that the burden of proving an alternative forum is the defendant's and that the remedy must be clear before the case will be dismissed. *See, e.g., Canadian Overseas Ores, Ltd. v. Compania de Acero del Pacifico*, 528 F.Supp. 1337 (S.D.N.Y.1982).

[4] The defendant bears the burden of proving the existence of an adequate alternative forum. *See Schertenleib v. Traum*, 589 F.2d 1156, 1160 (2d Cir.1978). Boeing has provided sufficient proof. The district court did not abuse its discretion in finding that Boeing's assertion that Taiwan was an adequate forum was supported by sufficient evidence.

[5, 6] Plaintiffs argue that the district court failed to give proper consideration and weight to the fact that the actions involved several American plaintiffs. The presence of American plaintiffs, however, is not in and of itself sufficient to bar a district court from dismissing a case on the ground of *forum non conveniens. Alcoa Steamship Company, Inc. v. M/V Nordic Regent*, 654

F.2d 147, 154-58 (2d Cir.) (en banc), *cert. denied*, 449 U.S. 890, 101 S.Ct. 248, 66 L.Ed.2d 116 (1980); *Pain v. United Technologies Corp.*, 637 F.2d 775, 795-99 (D.C.Cir.1980), *cert. denied*, 454 U.S. 1128, 102 S.Ct. 980, 71 L.Ed.2d 116 (1981). The record reflects that the district court gave proper consideration to this factor in reaching its decision. Plaintiffs also argue that the abrogation by the United States of the 1948 Treaty of Friendship, Commerce and Navigation between the United States and Taiwan has eliminated the right of a United States citizen to sue in a Taiwan court. Because plaintiffs did not raise this issue in the district court, we do not consider it on appeal. Finally, plaintiffs argue that a Taiwan court would have difficulty in applying American law. We find no error in the district court's conclusion that a Taiwan tribunal is competent to decide questions of American law, if American law should apply to the issues in this litigation. We recognize that the necessity of applying American law may add weight to the factors favoring retention of jurisdiction, *Fisher v. The Agios Nicolags V*, 628 F.2d 308, 314-15 (5th Cir. 1980), *cert. denied*, 454 U.S. 816, 102 S.Ct. 92, 70 L.Ed.2d 84 (1981), but we do not find sufficient weight here to support a rejection of the district court's conclusion that Taiwan is the more appropriate forum.

The *Harada* brief makes additional arguments as to the Japanese plaintiffs based on the 1948 Multilateral Treaty of Peace with Japan, the 1952 Republic of China-Japan Treaty of Peace, and Japan's 1972 unilateral abrogation of the 1952 Treaty. These arguments, as well as the arguments based on Federal Aviation Authority regulations; the fifth amendment to the U.S. Constitu-

tion, 42 U.S.C. § 1981; the Federal Aviation Act, 49 U.S.C. §§ 1301-1542; the Trading with the Enemy Act, 50 U.S.C.App. §§ 1-44; and 28 U.S.C. §§ 1337 and 1350, were not raised in the district court.

The district court analyzed the private interest factors which demonstrate that Taiwan is an adequate alternative forum. *See Reyno*, 454 U.S. at 241 n. 6, 102 S.Ct. at 258 n. 6. The district court also considered the public interest factors in its application of the test enunciated in *Pain v. United Technologies:*

> [F]irst, that courts may validly protect their dockets from cases which arise within their jurisdiction, but which lack significant connection to it; second, that courts may legitimately encourage trial of controversies in the localities in which they arise; and third, that a court may validly consider its familiarity with governing law when deciding whether or not to retain jurisdiction over a case. Thus, even when the private conveniences of the litigants are nearly in balance, a trial court has discretion to grant *forum non conveniens* dismissal upon finding that retention of jurisdiction would be unduly burdensome to the community, that there is little or no public interest in the dispute, or that foreign law will predominate if jurisdiction is retained....

637 F.2d at 791-92 (derived from *Gulf Oil v. Gilbert*, 330 U.S. at 508-09, 67 S.Ct. at 843) (footnotes omitted).

Refusal to permit discovery

[7] Upon filing their complaint, plaintiffs also sought to depose two Boeing employees. The court quashed the notices of deposition and barred all further discovery. However, the court accepted the affidavit of one of the employees plaintiffs sought to depose. Plain-

tiffs argue that the district court abused its discretion by denying discovery limited to the *forum non conveniens* issue and then accepting the affidavit of one of the witnesses that they had sought to depose. The denial of discovery was not an abuse of discretion:

> An appellate court will not interfere with the trial court's refusal to grant discovery except on the clearest showing . . . [of] actual and substantial prejudice to the litigant . . . . Discovery, however, "should be granted where pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary." *Kilpatrick v. Texas and P. Ry.*, 72 F. Supp. 635, 638 (S.D.N.Y.1947).

Wells Fargo & Co. v. Wells Fargo Exp. Co., 556 F.2d 406, 431 n. 24 (9th Cir.1977). Although it is possible that discovery might have provided more detail, we find that Boeing and United provided "enough information to enable the District Court to balance the parties' interests." *Reyno*, 454 U.S. at 258, 102 S.Ct. at 267.

Plaintiffs argue that discovery would have shown that there were other lawsuits arising out of this aircrash pending in California courts and that Boeing had not raised *forum non conveniens* there as a defense. They also argue that discovery would have demonstrated that they could obtain jurisdiction over Far Eastern Air Transport because it had filed a lawsuit in California in 1975, averring in its complaint that it was authorized to do business in California. At oral argument, however, defendants demonstrated that all California state litigation arising out of this aircrash has been settled or dismissed and that the 1975 lawsuit was brought without Far Eastern's authorization or its knowledge.

While plaintiffs correctly assert that *forum non conveniens* questions are often an appropriate subject for directed discovery, *Lekkas v. Liberian M/V Caledonia*, 443 F.2d 10 (4th Cir.1971), that a plaintiff ordinarily should not be required to rely on a movant's affidavits on a motion to dismiss, that a plaintiff should be able to conduct directed discovery on the issues raised by the motion, *Blanco v. Carigulf Lines*, 632 F.2d 656, 658 (5th Cir.1980), we find no abuse of discretion.

Far Eastern Air Transport as a defendant

[8-10] Far Eastern is a Taiwan corporation which does no business in California. Diversity jurisdiction does not encompass foreign plaintiffs suing foreing defendants. 28 U.S.C. § 1332. Further, the Federal Aviation Act, 49 U.S.C. §§ 1301-1542, does not apply to the activities of a foreign carrier operating between two foreign points without contact in the United States. 49 U.S.C. §§ 1301(23)(c), (24)(c). There is therefore no federal question jurisdiction over Far Eastern. *See* 28 U.S.C. § 1331.

Affirmed.

APPENDIX B

LUI SU NAI-CHAO, ET AL.,
Plaintiffs,

VERSUS

THE BOEING COMPANY, ET AL.,
Defendants.

No. C-81-4235 WHO.*

**United States District Court,
N.D. California.**

April 12, 1982.

OPINION AND ORDER

ORRICK, District Judge.

The complaints that comprise these consolidated or related actions arise from the crash of a Far Eastern Air Transport ("FEAT") Boeing 737 aircraft in Taiwan, Republic of China, on August 22, 1981. Of the one hundred ten passengers and crew killed in the crash, eighty-seven were citizens and residents of Taiwan, eighteen were citizens of Japan, four were citizens of Canada, and one was a citizen of the United States. To date, five hundred sixty-four plaintiffs, seven of whom are United States citizens and four of whom are Taiwanese citizens presently residing in the United States,

* And Consolidated or Related Case Nos. C-81-3702 WHO, C-81-3703 WHO, C-81-4710 WHO, C-81-4711 WHO, C-81-4712 WHO, C-81-4713 WHO, C-81-4714 WHO, C-81-4715 WHO, C-81-4716 WHO, C-81-4717 WHO, C-81-4718 WHO, C-81-4719 WHO, C-81-4720 WHO, C-81-4721 WHO, C-81-4722 WHO, C-81-4723 WHO, C-81-4724 WHO, C-82-0401 WHO.

have filed suit in this Court[1] asserting wrongful death claims based on theories of strict liability and negligence against The Boeing Company ("Boeing"), the manufacturer of the aircraft, and United Airlines, Inc. ("United"), which sold the aircraft to FEAT in 1976.

Defendant Boeing, acting also for defendant United,[2] has moved to dismiss these actions on the

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[1] To date, nineteen separate actions arising from the accident have been filed in this Court: *Chiuen v. Boeing Co.*, No. C-81-3702 WHO (Sept. 18, 1981); *Chang v. Boeing Co.*, No. C-81-3703 WHO (Sept. 18, 1981); *Nai-Chao v. Boeing Co.*, No. C-81-4235 WHO (Oct. 29, 1981); *Harada v. Boeing Co.*, No. C-81-4710 WHO (Dec. 18, 1981); *Miyao v. Boeing Co.*, No. C-81-4711 WHO (Dec. 18, 1981); *Mukoda v. Boeing Co.*, No. C-81-5712 WHO (Dec. 18, 1981); *Shiwachi v. Boeing Co.*, No. C-81-4713 (Dec. 18, 1981); *Suzuki v. Boeing Co.*, No. C-81-4714 WHO (Dec. 18, 1981); *Suzuki v. Boeing Co.*, No. C-81-4715 WHO (Dec. 18, 1981); *Takahashi v. Boeing Co.*, No. C-81-4716 WHO (Dec. 18, 1981); *Takahashi v. Boeing Co.*, No. C-81-4717 WHO (Dec. 18, 1981); *Tatsumi v. Boeing Co.*, No. C-81-4718 WHO (Dec. 18, 1981); *Tamada v. Boeing Co.*, No. C-81-4719 WHO (Dec. 18, 1981); *Yoshiwara v. Boeing Co.*, No. C-81-4720 WHO (Dec. 18, 1981); *Zayasu v. Boeing Co.*, No. C-81-4721 WHO (Dec. 18, 1981); *Hasegawa v. Boeing Co.*, No. C-81-4722 WHO (Dec. 18, 1981); *Kuno v. Boeing Co.*, No. C-81-4723 WHO (Dec. 18, 1981); *Mimura v. Boeing Co.*, No. C-81-4724 WHO (Dec. 18, 1981); *Cheng v. Boeing Co.*, No. C-82-0401 WHO (Jan. 21, 1982).

The first complaints filed by the Chinese plaintiffs on September 18, 1981, and October 29, 1981, named as defendants Boeing, The Garrett Corporation, The Signal Companies, Inc., Air Research Manufacturing Company of California, and Air Research Aviation Company. Boeing filed its motion to dismiss on grounds of *forum non conveniens* on December 9, 1981. The Japanese complaints were first filed on December 18, 1981, and named as defendants Boeing, United, and FEAT. On January 11, 1982, plaintiffs in the Chinese actions filed an amended complaint, dismissing from the action all the defendants named in the original complaint with the exception of Boeing, and adding United as a defendant.

[2] The motion to dismiss on grounds of *forum non conveniens* was briefed and argued by Boeing, on behalf of both Boeing and

ground of *forum non conveniens* or, alternatively, to transfer the actions pursuant to 28 U.S.C. § 1404(a) to the United States District Court for the Western Dis-

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United, and was taken under submission on January 22, 1982. Pursuant to a stipulation of the parties, United was given until March 2, 1982, to respond to the complaints. On February 26, 1982, this Court granted United's motion for a further extension of time to plead and ordered all matters stayed as to all parties until such time as the Court rendered its decision on the motion to dismiss.

Despite this Court's order staying any further action by the parties, plaintiffs continued to conduct informal discovery in support of their opposition to defendants' motion, and submitted additional documents to the Court pertaining to the cause of the accident and the circumstances and terms of the sale of the aircraft from United to FEAT in 1976. On March 8, 1982, the Japanese plaintiffs filed a motion for inclusion in the record of such additional documents, and on March 12, 1982, the Chinese plaintiffs filed a motion seeking permission to file affidavits and additional documents, or in the alternative, for an evidentiary hearing on certain issues relevant to the *forum non conveniens* motion.

Recognizing that further discovery might yield additional information which could assist the Court in arriving at a conclusive determination of the many issues raised by defendants' motion, the Court notes that the very nature and purpose of the *forum non conveniens* doctrine precludes unlimited discovery. As the Supreme Court observed in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 258, 102 S.Ct. 252, 267, 70 L.Ed.2d 419 (1981), "[r]equiring extensive investigation would defeat the purpose of their motion. Of course, defendants must provide enough information to enable the District Court to balance the parties' interests." This Court has reviewed the additional documents submitted by plaintiffs, in order to ascertain whether those documents raise any new issues which might affect the Court's decision on defendants' motion. The Court is satisfied that the additional evidence presented by plaintiffs would not in any event affect the Court's ultimate determination, and thus that an evidentiary hearing or further briefing by the parties would serve no useful purpose. Accordingly, these additional documents are not included in the record, and the Court does not rely on the issues raised in said documents in arriving at its decision.

trict of Washington.[3] For the reasons set forth below, this Court finds that Taiwan is the appropriate forum for this litigation and that the recent Supreme Court decision in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S. Ct. 252, 70 L.Ed.2d 419 (1981), mandates the dismissal of these actions. Accordingly, defendants' motion to dismiss is granted, and will become effective when the Court receives undertakings satisfactory to the Court from defendants Boeing and United that the following conditions have been or will be met, namely, that (1) the courts of Taiwan have, and will assert, jurisdiction to adjudicate the claims alleged in these actions; (2) defendants consent to submit themselves to personal jurisdiction in the appropriate Taiwanese court and to make their employees available to testify in Taiwan; (3) defendants agree to waive any statute of limitations defenses arising during the pendency of these actions; and (4) defendants consent to satisfy any judgment rendered against them in Taiwan.

I

On August 22, 1981, a Boeing 737 owned and operated by FEAT crashed on a flight between the Taiwanese cities of Taipei and Kaohsiung. Radar contact with the aircraft was lost about twelve minutes after takeoff from Taipei, after the aircraft reached its assigned cruise altitude of 22,000 feet. A number of Taiwanese reportedly observed the aircraft break up in the air. The wreckage was scattered over a seven-mile area in

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[3] Seattle, Washington is Boeing's principal place of business and is where the subject aircraft was originally designed, assembled, and tested.

rugged terrain approximately sixty miles southwest of Taipei. All one hundred four passengers and six crew members aboard the aircraft were killed.

The Chinese Civil Aeronautics Administration ("CCAA") initiated an accident investigation, in which Boeing, United, and other American officials participated. The CCAA issued a preliminary report, but has made no final report and no finding of the probable cause of the accident. The United States National Transportation and Safety Board ("NTSB") performed an analysis of critical parts of the wreckage, and the CCAA is currently in the process of building a mock-up of the aircraft with the wreckage pieces to aid in its investigation.

FEAT purchased the aircraft from United in 1976, and owned, operated, and maintained the aircraft in the five-and-a-half years prior to the accident. All major maintenance of the aircraft was performed by FEAT personnel at Shungshan Airport in Taipei, pursuant to a maintenance program developed by Boeing in the United States, and licensed and approved by the CCAA.

The complaints charge defendants with negligence and strict liability based on the allegedly defective design, manufacture, and/or assembly of the aircraft, and on the allegedly improper inspection and maintenance of the aircraft prior to the sale to FEAT in 1976. Plaintiffs assert that of the possible causes of the crash—defective design or manufacture, pilot error, bad weather, or sabotage—the most likely cause was a crack in the forward cargo compartment frame and skin which led

to a loss of pressurization. Plaintiffs have submitted documentary evidence indicating that such cracks were discovered in several 737's operated in the United States, and that an investigation conducted by the NTSB revealed massive corrosion and metal fatigue of the lower forward cargo hold frame which appears consistent with plaintiffs' theory of the accident.[4]

II

A

[1, 2] Under the principle of *forum non conveniens*, a court may resist the imposition of jurisdiction, even if jurisdiction is authorized by a general venue statute. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947). The common law doctrine of *forum non conveniens* was partly displaced by the provisions of 28 U.S.C. § 1404(a), which require transfer rather than dismissal if the case can be heard in a more convenient district or division within the

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[4] In the time since January 22, 1982, when this Court took defendants' *forum non conveniens* motion under submission, plaintiffs have submitted additional evidence, including FAA Airworthiness Directives and Boeing Service Bulletins. This evidence suggests that the aircraft was manufactured with a certain sidewall frame defect and a certain bonded skin panel defect which, alone or together, could be a probable cause of the accident, and that both Boeing and United learned of these defects prior to the sale in 1976. Plaintiffs have also submitted documents pertaining to the sales contract between United and FEAT which, plaintiffs claim, demonstrates that United sold the aircraft with knowledge of its defective condition. The facts asserted in these documents, though relevant for purposes of establishing a *prima facie* case of defect, do not affect this Court's decision on defendants' motion. *See* note 2, *supra*.

United States;[5] the common law doctrine remains applicable, however, when the action should have been brought abroad. *Yerostathis v. A. Luisi, Ltd.*, 380 F.2d 377, 379 (9th Cir. 1967); *Paper Operations Consultants International, Ltd. v. SS Hong Kong Amber*, 513 F.2d 667, 670 (9th Cir. 1975).

[3] The factors which the Court must consider in determining whether to grant a motion to dismiss on grounds of *forum non conveniens* were set forth by the Supreme Court in *Gilbert, supra*, 330 U.S. at 508-09, 67 S.Ct. at 843. The Court enumerated both the "private interest factors" affecting the convenience of the litigants and the "public interest factors" affecting the convenience of the forum. The private interest factors include "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Id.* at 508, 67 S.Ct. at 843. The public interest factors include the administrative difficulties flowing from court congestion; the local interest in having localized controversies at home; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflicts of law,

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[5] 28 U.S.C. § 1404(a) provides that:

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

or in application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty. *Id.* at 509, 67 S.Ct. at 843.

The Court in *Gilbert* noted that the plaintiff's choice of forum should not be disturbed "unless the balance is strongly in favor of the defendant." *Id.* at 508. The Court of Appeals for the Ninth Circuit has recently indicated that the standard to be applied is whether, in light of the factors, defendants have made a "clear showing" so as to establish either "(1) such oppression and vexation of a defendant as to be out of all proportion to the plaintiff's convenience, which may be shown to be slight or non-existent, or (2) make trial in the chosen forum inappropriate because of considerations affecting the court's own administrative and legal problems." *Miskow v. Boeing Co.*, No. 79-3904 (9th Cir. Oct. 28, 1981),[6] *quoting Paper Operations, supra*, 513 F.2d at 670. Where the issue is whether to dismiss the action or whether to transfer it to another district or division within the United States, the Ninth Circuit indicated in *Miskow* that dismissal is appropriate where the district court weighs the *Gilbert* factors and determines that transfer to another district or division will not significantly alleviate the burden that retention of jurisdiction would impose on private and public interests. *Id.*

On December 8, 1981, after the filing of Boeing's motion to dismiss, the Supreme Court issued its first

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[6] *Miskow v. Boeing Co.*, No. 79-3404 (9th Cir. Oct. 28, 1981), was initially designated as a memorandum opinion, but was designated as an opinion for publication by order dated November 30, 1981.

decision addressing the doctrine of *forum non conveniens* in over thirty years, and applied the doctrine in a factual context strikingly similar to that now before this Court. In *Reyno, supra,* the Court elaborated further on the considerations set forth in *Gilbert* and applied the doctrine of *forum non conveniens* to dismiss a products liability action arising out of an airplane crash in Scotland on the grounds that Scotland was the proper forum. Because this Court finds that *Reyno* is dispositive of Boeing's motion to dismiss these actions, a detailed examination of the *Reyno* decision is appropriate.

In *Reyno,* the respondent, acting as representative of the estates of several Scottish citizens killed in an air crash in Scotland during a charter flight, instituted wrongful death actions in California state court against Piper Aircraft, which had designed and manufactured the plane in Pennsylvania, and Hartzell Corporation, which had manufactured the propellers in Ohio. At the time of the crash the plane was registered in Great Britain and was owned and operated by companies organized in the United Kingdom. The pilot and all of the decedents' heirs and next of kin were Scottish subjects and citizens, and the investigation of the accident was conducted by British authorities. Respondent sought to recover from petitioners on the basis of negligence or strict liability, the latter not recognized by Scottish law, and admitted that the action was filed in the United States because its laws regarding liability, capacity to sue, and damages are more favorable to respondent's position than those of Scotland.

On petitioners' motion, the action was removed to

the United States District Court for the Central District of California, and was then transferred to the United States District Court for the Middle District of Pennsylvania, pursuant to 28 U.S.C. § 1404(a). The district court granted petitioners' motion to dismiss the action on the ground of *forum non conveniens*. Relying on the test set forth in *Gilbert*, and analyzing the private interest factors affecting the forum's convenience, the district court concluded that Scotland was the appropriate forum. The Court of Appeals for the Third Circuit reversed, holding that the district court had abused its discretion in conducting the *Gilbert* analysis and that, in any event, dismissal is automatically barred where the law of the alternative forum is less favorable to the plaintiff than the law of the forum chosen by the plaintiff.

The Supreme Court granted a petition for a writ of *certiorari* and reversed the court of appeals. The Court held first that the fact that the substantive law that would be applied in the alternative forum is less favorable to plaintiffs than that of the chosen forum does not preclude dismissal and should ordinarily not be given even substantial weight in the *forum non conveniens* inquiry. *Reyno, supra*, 454 U.S. at 244-253, 102 S.Ct. at 260-264. Second, the Court held that plaintiff's choice of forum deserves less deference when the plaintiff or the real parties in interest are foreign, because, where the plaintiff is not suing in the home forum, the assumption that the plaintiff's choice of forum is convenient is much less reasonable. Third, the Court held that the district court did not abuse its discretion in weighing the private and public interests under the *Gil-*

bert analysis and determining that the trial should be held in Scotland.[7]

With regard to the district court's analysis of the private interest factors, the Court found that the district court reasonably concluded that fewer evidentiary problems would be posed if the trial were held in Scotland, because a large proportion of the relevant evidence was located there, and that the problems posed by the plaintiff's inability to implead potential Scottish third-party defendants (the pilot's estate, the plane's owners, and the charter company) supported holding the trial in Scotland. The Court also found the district court's analysis of the public interest factors to be reasonable, noting that, even apart from the question whether Scottish law might be applicable in part to the action, all other public interest factors favored trial in Scotland. The Court found that Scotland had a very strong interest in the litigation, because the accident occurred there, and all potential parties were either

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[7] Justice Marshall delivered the opinion of the Court, in which Chief Justice Burger and Justices Blackmun and Renquist joined. Justices Stevens and Brennan dissented on the grounds that the only issue properly before the Court was whether dismissal on the ground of *forum non conveniens* is barred where the law of the alternate forum is less favorable to recovery than that of the forum chosen by plaintiffs, and that the case should be remanded to the Court of Appeals for further consideration of whether the district court correctly concluded that Pennsylvania was not a convenient forum in light of the factors set forth in *Gilbert*. Justice White concurred in part and dissented in part on the grounds that the issue of whether Pennsylvania was not a convenient forum was not properly before the Court. Justices Powell and O'Connor did not participate in the decision of the case.

Scottish or English. The Court rejected respondent's argument that the United States' interest in deterring the production of defective products in this country justified retention of the litigation, noting that any additional deterrence that might be obtained from trial in an American court, where the manufacturer could be sued on strict liability as well as negligence theories, was not sufficient to justify the enormous commitment of judicial time and resources that would be required. *Id.* 454 U.S. at 258, 102 S.Ct. at 267.

B

[4] We turn now to the application of the several factors which must be considered in determining whether the applicable law mandates a dismissal or transfer of the case pursuant to the doctrine of *forum non conveniens* as set forth above.

1. *The Availability of an Alternative Forum*

The Supreme Court held in *Reyno* that, "[a]t the outset of any *forum non conveniens* inquiry, the court must determine whether there exists an alternative forum." *Reyno, supra*, 454 U.S. at 254-255 n. 22, 102 S.Ct. at 265 n. 22. An alternative forum is ordinarily considered "adequate" if the defendant is amenable to process there. *Gilbert, supra*, 330 U.S. at 507, 67 S.Ct. at 842. This Court's consideration of defendants' motion to dismiss for *forum non conveniens* is premised on the condition that defendants submit to the jurisdiction of the Taiwanese court.*

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* Several courts have conditioned *forum non conveniens* dismissals upon the submission of defendants to the jurisdiction of

The Court recognized in *Reyno*, however, that where the remedy afforded by the alternative forum is so clearly unsatisfactory as to be no remedy at all, the district court may conclude that dismissal would not be in the interest of justice:

> "In rare circumstances, however, where the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative, and the initial requirement may not be satisfied. Thus, for example, dismissal would not be appropriate where the alternative forum does not permit litigation of the subject matter of the dispute."

Reyno, supra, 454 U.S. at 254-255 n. 22, 102 S.Ct. at 265 n. 22.

Plaintiffs suggest that, under the reasoning in *Reyno*, Taiwan is not an adequate forum on the grounds that (1) a Taiwanese court would not have jurisdiction over these actions; (2) the plaintiffs here would not have easy access to a Taiwanese court, because Chinese law requires that plaintiffs pay a filing fee amounting to one percent of the claim; and (3) United States law would govern these actions, and the

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the foreign court where such jurisdiction might otherwise be uncertain, and some courts have added the further conditions that defendants must waive any statute of limitations defenses in the forum, and that, if the court refuses jurisdiction, plaintiffs may move the court to restore their action. Such an approach assures the availability of an alternative forum for plaintiffs. *See, e.g., Paper Operations Consultants International. Ltd., v. SS Hong Kong Amber*, 513 F.2d 667, 672 (9th Cir.1975); *Schertenleib v. Traum*, 589 F.2d 1156, 1166 (2d Cir.1978); *Macedo v. Boeing Co.*, 15 Av.Cas. (CCH) 18,032 (N.D.Ill. 1980), *appeal pending*, No. 80-1559 (7th Cir.).

application of foreign law would pose serious difficulties for a Taiwanese Court.

Plaintiffs rely heavily on the affidavit of Judge Yu Ching Wang, a former district court judge in Taiwan, who is currently an appellate judge and a member of the Judicial Yuan, the highest judicial body of the Republic of China. After careful consideration of plaintiffs' arguments, however, the Court finds that Taiwan is an adequate forum and, indeed, is the most appropriate forum for these plaintiffs.

Plaintiffs first argument is that Taiwan is an inadequate forum because the Chinese courts cannot at this point assme jurisdiction over these cases. According to Judge Wang, a Chinese court would have jurisdiction if these actions were originally filed in Taiwan, but can no longer assert such jurisdiction because the case has already been brought in the United States: "[S]hould the United States District Court send the case to the Republic of China with only the defendants' agreement, the Chinese court would not be competent to hear the case." Affidavit of Judge Yu Ching Wang attached to plaintiffs' motion filing affidavit filed January 22, 1982, at 2.

Judge Wang's conclusion is based on a misapprehension as to the nature of a dismissal for *forum non conveniens*. This Court clearly is not empowered to "send the case to the Republic of China with only the defendants' agreement"; this Court would simply dismiss the case, leaving the plaintiffs free to file these actions in Taiwan if they choose to do so. The affidavit of defendants' expert, Dr. Charng-Ven Chen, a practicing attorney and law professor in Taipei, who has received

Master's and Doctorate degrees from Harvard Law School, states that a *forum non conveniens* dismissal would not foreclose these plaintiffs from initiating actions in Taiwan, and that there is no law or case authority to the contrary. Dr. Chen's affidavit further states that the Taiwan court would have jurisdiction over these cases pursuant to the Civil Code of Procedure of the Republic of China, because the damage resulting from the allegedly tortious conduct occurred in China. Affidavit of Charng-Ven Chen in support of Boeing's motion to dismiss filed February 2, 1982, at 2.

The next argument advanced by plaintiffs is that Taiwan is not an adequate forum because the Chinese courts require payment of a filing fee amounting to one percent of the claim, and an additional fee of one-half percent is required for each appeal. The Court does not find this argument persuasive. Judge Wang himself notes that a party may obtain procedural relief from payment of the fee if the party is "devoid of the means to pay the cost." Judge Wang suggests that such relief is granted only in those cases where the plaintiff is completely destitute, but the Court notes that the plaintiffs here have not asserted that the filing fee requirement would make it impossible for them to prosecute this action in China, or even that the fee would be a serious hardship to them. Moreover, as Dr. Chen points out in his affidavit, under Chinese law the prevailing party may by court judgment recover the court costs from the losing party. Finally, the Court notes that the utilization of a filing fee is simply the method chosen by the Taiwanese government to finance its court system, and it seems fundamentally unfair to

compel United States' citizens to "subsidize" an action which should have been brought in another forum, at least, where as here, the plaintiffs have not even attempted to argue that the requirements of the foreign judicial system constitute a serious obstacle. This Court rejects plaintiffs' contention that, should foreign laws require advancement of funds by a litigant not necessary in the United States, the foreign court must be deemed an inadequate forum, finding such a position without support in the case law or in common sense.*

Finally, plaintiffs contend that Taiwan is not an adequate forum because, under Chinese choice of law

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* *See Dobson v. Amoco (U.K.) Exploration Co.*, No. 78-C-2203 (N.D.Ill. Mar. 21, 1979), mem. op. at 5 ("Plaintiffs also argue that they should be allowed to escape the English practice of charging attorneys fees and costs to the losing party. * * * [W]e can see no reason why this action, which has every connection with England and none with the United States, should be brought here simply to except it from rules which ordinarily govern English lawsuits.") *cf. Fiorenza v. U.S. Steel International, Ltd.*, 311 F.Supp. 117 (S.D.N.Y.1969) (Where Italian plaintiff asserted claim for injuries sustained on Grand Bahama Island whle employed by defendant, a Delaware corporation with its principal place of business in New York, and plaintiff could not bring suit in the Bahamas because of Bahamian prohibition against contingent fee arrangements, uncertainty as to whether a Bahamian court would have jurisdiction, and the possibility that plaintiff would be deported to Italy, the court found that the prospective unavailability of the alternative forum outweighed the other factors considered in *Gilbert* and denied defendants' motion to dismiss for *forum non conveniens*.); *D'Angelo v. Petroleos Mexicanas*, 398 F.Supp. 72 (D.Del.1975) (Delaware plaintiff, receiver of a Delaware corporation, who brought action against Mexican government agency would not be dismissed on *forum non conveniens* where plaintiff could not afford to travel to Mexico to prosecute the action and where issues involving Mexican law could be determined primarily on the basis of expert testimony.).

rules, a Chinese court would be required to apply United States law to these actions, and the application of foreign law would be extremely difficult. Judge Wang asserts that:

> As all of the wrongful acts allegedly occurred in the United States and only the result occurred in the Republic of China, our jurisprudential interpretations of 'lex loci delicti' mandates that the law of the United States be applied in this case. * * From my experience as a District Judge and High Court Judge, I personally feel it would be nearly impossible for our court system to adequately adjudicate this massive case against American defendants according to American law."

Wang affidavit, *supra*, at 2.

Under *Gilbert*, the choice of law issue is properly considered in the context of the Court's analysis of the "public interest factors," *infra*. For purposes of plaintiffs' contention that the choice of law problem renders Taiwan an inadequate forum, it is sufficient to note that no case known to this Court has held an alternative forum to be inadquate simply because of the potential difficulties in applying foreign law, and this Court is unwilling to accept the proposition that a Chinese court is less competent than an American court in application of foreign law. The Court agrees with the reasoning of Dr. Chen that:

> "Assuming for the sake of argument that the court of the R.O.C. would apply the law of the place of commission, i.e. U.S. laws, etc., the court of the R.O.C. will apply such laws without difficulty, otherwise the very existence of the Law of 6 June 1953 ["Law Governing the Application of Laws in Civil Matters Involving Foreign Elements"] loses

its meaning. Any suggestion that the court of the ROC is not competent to analyse any foreign law is subject to criticism of prejudice."

Chen affidavit, *supra*, at 2-3.

Thus, this Court finds that the threshold requirement of an adequate alternative forum is satisfied in this case, and proceeds to an analysis of the private and public interest factors set forth in *Gilbert*, and reaffirmed in *Reyno*.

2. *The Private Interest Factors*

Perhaps the most important private interest factor is the relative availability of evidence and witnesses. Although relevant evidence and witnesses in this case are located both in the United States and Taiwan, it appears to the Court that discovery and trial on the issues of liability and damages will be greatly facilitated if this action proceeds in Taiwan.

Plaintiffs maintain that all of the documentary and physical evidence necessary to establish that the aircraft was defective is located in the United States. It appears that the evidence relating to the design and manufacture of the aircraft, maintenance records for the period that the aircraft was operated by United, documentation pertaining to 737 certification, and Boeing Airworthiness Directives and Service Bulletins, are all located in this country. Evidence pertaining to FEAT's maintenance, under the supervision of the CCAA, of the aircraft during the five-and-a-half-year period preceding the crash, however, is located in Taiwan.[10] Evidence pertaining to the investigation of

[10] Defendants maintain that evidence concerning FEAT's maintenance of the aircraft in the five-and-a-half years prior to

the accident by the CCAA, as well as the critical parts of the wreckage itself, appear to be in Taiwan.[11] A view of the premises is obviously available only in Taiwan, and might assist defendants in establishing that the accident was caused wholly or in part by something other than a defective airframe. Moreover, virtually all of the evidence relating to proof of damages is in Taiwan, where the overwhelming majority of claimants reside, and the difficulties of adjudicating these foreign damage claims would be compounded by the presence of language barriers and the necessity for translation.[12]

As to the availability of witnesses, the Court must consider both the availability of compulsory process for attendance of unwilling witnesses, and the cost of obtaining willing witnesses. Plaintiffs assert that all of the

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the crash is of much greater relevance to plaintiffs' claim than is evidence concerning United's maintenance of the aircraft prior to 1976, particularly in view of the Boeing Service Bulletins recommending periodic inspections of the airframe, and FEAT's claim to have inspected the aircraft repeatedly in accordance with Boeing Service Bulletins in the two months preceding the accident. However, plaintiffs contend that Boeing personnel present in Taiwan immediately after the accident had ample opportunity to gather evidence pertaining to FEAT's maintenance of the aircraft, and did in fact collect significant amounts of such evidence.

[11] Plaintiffs claim that critical parts of the wreckage were brought to the United States for examination by Boeing and the NTSB; it appears, however, that the parts given to Boeing by the CCAA have since been returned to Taiwan and are presently under the control of the CCAA. Defendants also point out that the CCAA is currently in the process of constructing a mock-up of the forward area of the aircraft fuselage in Taiwan to assist in their investigation.

[12] Plaintiffs properly point out that, as a practical matter, the possibility of settlement in the event that defendants are found liable may render discovery and trial of damages unnecessary.

witnesses who can testify as to the design and manufacture of the aircraft, and the maintenance of the craft prior to the sale, are located in the United States. All these witnesses are clearly subject to process in this Court, and it is clearly more convenient for such witnesses to attend trial in this country than in Taiwan. On the other hand, all witnesses to the air crash, all witnesses who could testify as to the inspection and maintenance of the aircraft by FEAT and to supervision by the CCAA, and all witnesses who could testify regarding the investigation of the accident by Taiwanese authorities, as well as witnesses who knew the decedents and whose testimony would be necessary to ascertain damages, are located in Taiwan. It is doubtful whether this Court could enforce process compelling the attendance of persons with relevant knowledge who are not parties to this litigation, and compelling the litigants to try their case without the benefit of live testimony from important witnesses would impose a serious hardship upon them and upon this Court. The Supreme Court in *Gilbert* emphasized the importance of this factor, and said that:

> "[t]o fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants."

Gilbert, supra, 330 U.S. at 511, 67 S.Ct. at 844. Although mechanisms for obtaining necessary documents and testimony from abroad exist, various procedural obstacles would no doubt limit the availability and

scope of foreign discovery to the parties if trial were conducted in the United States.[13]

Another critical private interest factor, in addition to the availability of evidence and witnesses, is the Court's ability to assert jurisdiction over all parties to the litigation, including potential third-party defendants. The Court said in *Reyno* that the aircraft manufacturer should not be compelled to go to trial in a forum where the owner and operator of the aircraft cannot be joined:

> "Joinder of the pilot's estate, Air Navigation, and McDonald is crucial to the presentation of petitioners' defense. If Piper and Hartzell can show that the accident was caused not by a design defect, but rather by the negligence of the pilot, the plane's owners, or the charter company, they will be relieved of all liability. It is true, of course, that if Hartzell and Piper were found liable after a trial in the United States, they could institute an action for indemnity or contribution against these parties in Scotland. It would be far more convenient, however, to resolve all claims in one trial."

Reyno, supra, 454 U.S. at 259, 102 S.Ct. at 267.

In the case at bar, the presence at trial of FEAT, the owner and operator of the aircraft for the five-and-one-half years preceding the accident, and of the CCAA, the Chinese regulatory authority, is critical to the defense. It is highly unlikely that the CCAA, as a

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[13] The problems inherent in conducting discovery abroad are well described in *Pain v. United Technologies Corp.*, 637 F.2d 775 (D.C. Cir.1980).

foreign governmental agency, could be joined as a party in this action, and it is uncertain whether FEAT would be subject to general jurisdiction or specific tort jurisdiction based on its transaction of business in California.[14] Plaintiffs' offer to indemnify the defendants for any liability apportioned by this Court to FEAT and the CCAA does not, in the opinion of this Court, eliminate the prejudice to defendants arising from their potential inability to implead third-party defendants, because, as a practical matter, the trier of fact cannot be

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[14] Although no United States court has yet attempted to assert jurisdiction over FEAT, certain documents recently submitted by plaintiffs describing the circumstances and terms of the sales contract between FEAT and United raise the possibility that FEAT might be subject to California's specific tort jurisdiction in this case. The documents indicate that FEAT and United conducted negotiations in California, and that the sales agreement provided for continuing servicing transactions in this state and for the training of FEAT maintenance personnel in this state. Thus, the case at bar appears distinguishable from *Donahue v. Far Eastern Transport Corp.*, 652 F.2d 1032 (D.C.Cir.1981), in which the court found that FEAT's activities within the state were insufficient to support the exercise of the Court's general jurisdiction, and that FEAT's isolated and relatively minor activities within the state were insufficient to support the exercise of that state's specific tort jurisdiction because those activities were totally unrelated to the accident for which recovery was sought in that case. The *Donahue* court specifically noted, however, that the commission of "some single or occasional acts" in a state might be sufficient to render a corporation liable to suit in the state with respect to claims arising from those acts, which appears to be the situation in the instant case. *Id.* at 1036. Although this Court recognizes that jurisdiction over FEAT might be obtained if this case were to proceed to trial in California, the Court declines to rule on this issue at the present time and does not rely on the unavailability of FEAT as a necessary ground for granting defendants' *forum non conveniens* motion.

expected to evaluate fairly the relative liability of parties not present at the trial.

3. *The Public Interest Factors*

A consideration of the public interest factors enumerated by the Supreme Court in *Gilbert* place beyond all doubt any question that this Court might have had regarding the proper forum for the trial of this lawsuit. Clearly the balance tips decidedly against the plaintiffs' choice of forum.

The three principles underlying the public interest factors have been aptly summarized by the D.C. Circuit in *Pain v. United Technologies Corp.*, 637 F.2d 775 (1980), a decision which the Supreme Court cited with approval in *Reyno:*

> "[F]irst, that courts may validly protect their dockets from cases which arise within their jurisdiction, but which lack significant connection to it; second, that courts may legitimately encourage trial of controversies in the localities in which they arise; and third, that a court may validly consider its familiarity with governing law when deciding whether or not to retain jurisdiction over a case. *Thus, even when the private conveniences of the litigants are nearly in balance, a trial court has discretion to grant forum non conveniens upon finding that retention of jurisdiction would be unduly burdensome to the community, that there is little or no public interest in the dispute, or that foreign law will predominate if jurisdiction is retained.*"

(Footnotes omitted; emphasis added). *Id.* at 791-92.

It is beyond dispute that the docket of this Court is heavily congested, and that the Court can ill afford the

time and expense of adjudicating a controversy which does not have significant connections to this forum, particularly where, as here, the case will require a massive expenditure of judicial resources. The Supreme Court in *Reyno* emphasized the principle that "there is a local interest in having localized controversies decided at home," *Reyno, supra*, 454 U.S. at 260, 102 S.Ct. 268; and found that Scotland had a "very strong interest" in the case because "the accident occurred in its airspace, the decedents were Scottish and, apart from Piper and Hartzell, all potential plaintiffs and defendants were either Scottish or English." *Id.* at 454 U.S. at 260, 102 S.Ct. at 268. Applying this reasoning to the case at bar, which involves an accident in Taiwan airspace, a Taiwan-registered aircraft operated by a Taiwan airline, and predominantly (87 of 110) Taiwanese decedents, it would appear that Taiwan has a strong local interest in this litigation.

Plaintiffs seek to establish a nexus with the United States by characterizing these actions as American products liability actions, stressing that the aircraft was designed and manufactured in this country and that the aircraft was inspected and maintained in accordance with the United States regulatory scheme. Plaintiffs suggest that, because Boeing aircraft are utilized extensively in the United States, this country has a predominant interest in retaining this litigation in order to deter the production of defective aircraft in the future.

The Supreme Court in *Reyno* expressly rejected the position urged by plaintiffs here, indicating that the interest of the United States in deterring the produc-

tion of defective products was not sufficient to justify retention of the litigation:

> "Respondent argues that American citizens have an interest in ensuring that American manufacturers are deterred from producing defective products, and that additional deterrence might be obtained if Piper and Hartzell were tried in the United States, where they could be sued on the basis of both negligence and strict liability. However, the incremental deterrence that would be gained if this trial were held in an American court is likely to be insignificant. The American interest in this accident is simply not sufficient to justify the enormous commitment of judicial time and resources that would inevitably be required if the case were to be tried here."

Id. at 454 U.S. at 260-261, 102 S.Ct. at 268. The case at bar would require a much greater "commitment of judicial time and resources" than *Reyno;* and plaintiffs cannot, by characterizing their causes of action as product liability claims against American defendants, escape the fact that these claims arise in the context of a Taiwanese accident and that Taiwan has the predominant interest in this litigation.[15]

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[15] The reasoning relied upon by the court in *Macedo, supra* note 8, 15 Av.Cas. at 18,034, is equally applicable here:

> "The fact that the aircraft was manufactured in the United States does not make the accident, involving a Portuguese airline, an airport in Portugal, predominantly Portuguese plaintiffs and Portuguese witnesses, any less a matter of local Portuguese interest. Plaintiffs cannot, by characterizing their causes of action as products liability claims, eliminate the very intimate relation of Portugal to the accident; the products liability claims arise in the context of a Portuguese accident."

The Supreme Court indicated in *Gilbert* and *Reyno* that another public interest factor supporting dismissal for *forum non conveniens*, in addition to the administrative burden on a forum which has only minimal contact with the controversy, and the local interest which another forum may have in the controversy, is the necessity of applying foreign law or of grappling with difficult choice of law questions. This Court must apply the choice of law rules of the California state courts, *Klaxon Co. v. Stentor Electric Manufacturing Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941), and follow the "governmental interest" approach to determine whether the law of Taiwan or that of the United States would govern this action. *Reich v. Purcell*, 67 Cal.2d 551, 63 Cal.Rptr. 31, 432 P.2d 727 (1967).

In *Hurtado v. Superior Court*, 11 (Cal.3d 574, 114 Cal.Rptr. 106, 522 P.2d 666 (1974), the California Supreme Court enumerated the three distinct governmental interests which may be implicated in wrongful death actions: (1) compensation for resident survivors; (2) deterrence of wrongful conduct within the jurisdiction; and (3) limitations upon the amount of damages recoverable. The parties have not suggested that the third factor, limitations upon damages, is of concern in the instant case. With regard to the most important governmental interest, the interest in compensating resident survivors, it is clear that Taiwan has the much greater interest since the vast majority of the beneficiaries are Taiwanese and the burden of supporting those survivors would fall upon the government of Taiwan.[18]

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[18] *See Bouvy-Loggers v. Pan American World Airways, Inc.*, 15 Av.Cas. (CCH) 17,153, 17,155 (S.D.N.Y.1978) ("Here, The

With regard to the governmental interest in deterring wrongful conduct, plaintiffs correctly note that the United States has an interest in deterring the production of defective aircraft which are heavily used in this country. In view of the relatively limited weight which the Supreme Court accorded to this interest in *Reyno*, however, and the fact that Taiwan has by far the predominant interest in assuring that its residents receive compensation, this Court finds it quite possible that Chinese law would be applied to this action, and thus that the action is more appropriately tried by a court familiar with Chinese law.

Finally, plaintiffs contend that the presence of United States plaintiffs in this action precludes the granting of defendants' motion to dismiss under the circumstances presented here. Plaintiffs attempt to distinguish *Reyno* on the grounds that all the plaintiffs in that case were foreign, and that an American plaintiff's choice of forum must be accorded greater deference.

The Supreme Court noted in *Reyno* that there is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum, and indicated that a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum. *Reyno, supra*, 454 U.S. at 257-259, 102 S.Ct. at 264-266. The Supreme Court went on to stress,

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Netherlands has a strong interest in ensuring that this Dutch decedent's heirs are adequately compensated, for if they are not, it is The Netherlands and its citizens who will bear the financial responsibility for supporting them.").

however, that a plainitff's right to sue in his home forum is by no means absolute, but rather must be evaluated in the context of the many other factors relevant to the convenience of the parties and of the Court:

> "A citizens forum choice should not be given disposition weight, however. * * * Citizens or residents deserve somewhat more deference than foreign plaintiffs, but dismissal should not be automatically barred when a plaintiff has filed suit in his home forum. *As always, if the balance of conveniences suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court, dismissal is proper.*"

Id. at 255-256 n. 23, 102 S.Ct. at 266 n. 23. (emphasis added). The federal courts have not felt constrained to retain jurisdiction over predominantly foreign cases involving American plaintiffs where an examination of the *Gilbert* factors demonstrated that the action is more appropriately brought in a foreign forum.[17]

Although recognizing the deference properly accorded to a plaintiff's choice of forum, particularly in

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[17] One of the most recent decisions addressing this issue, *Dasi v. Air-India*, No. 79 Civ. 4898 (RWS) (S.D.N.Y. Jan. 26, 1981), slip op. at 5, dismissing for *forum non conveniens* on the grounds that France was the appropriate forum for the action, noted:

> "No special or 'talismanic' significance is attached to the fact that an American plaintiff who brought the action in a United States District Court would otherwise be relegated to a foreign forum. While it is said that the courts are 'reluctant' to sanction sending an American citizen abroad to litigate on the ground of forum non conveniens, that reluctance has not been so profound in practice, and such cases are to be analyzed according to the same *Gulf Oil* factors, with the American plaintiff sufficiently protected by the ad-

regard to the American plaintiffs in this action, the Court finds that the plaintiffs' choice of an American forum is here outweighed by the private and public interest factors pointing towards dismissal of this action, and that the presence of a handful of American plaintiffs does not preclude such dismissal.[18] The Court finds that defendants have satisfied the standard set forth by the Ninth Circuit in *Paper Operations, supra*, 513 F.2d at 670, by making a "clear showing" that "trial in the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems," and thus it is not necessary for defendants to establish "such oppression and vexation * * * as to be out of proportion to the plaintiff's convenience."

The Court also finds that the Western District of Washington is not a significantly more convenient

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monition of the *Gulf Oil* court that 'unless the balance [of conveniences] is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed,' and the burden thus placed upon the movant-defendant. In deciding a motion to dismiss on the ground of forum non conveniens, the court properly considers affidavits submitted by the parties." (Citations omitted.)

[18] Insofar as plaintiffs have vigorously asserted that the existence of treaties between the United States and China and Japan regarding access by citizens of those countries to the United States courts renders this Court's consideration of the plaintiffs' residence improper, the Court notes that such treaties do not immunize foreign citizens from application of the *forum non conveniens* doctrine and that the residency of the parties is a relevant factor in a *forum non conveniens* inquiry to the extent that it bears upon the location of evidence and witnesses, the court's ability to exercise its jurisdiction over the parties, and the public interest in the litigation.

forum, on the grounds that transfer would not significantly alleviate the burden that retention of jurisdiction would impose on private and public interest. While it is true that the principal place of business of defendant Boeing is in the Seattle area, the Court's analysis of the pertinent private and public interest factors compels the conclusion that Taiwan is the appropriate forum for these actions.

Accordingly, IT IS HEREBY ORDERED that defendant Boeing's motion to dismiss on the ground of *forum non conveniens* is granted and will become effective when this Court receives undertakings satisfactory to this Court from defendants Boeing and United that the following conditions have been or will be met, namely, that:

1. The courts of Taiwan have, and will assert, jurisdiction over these actions.

2. Defendants will submit themselves to the jurisdiction of the Taiwanese court, and will make their employees available to testify in Taiwan.

3. Defendants agree to waive any statute of limitations claims arising from the date that these actions were filed to the date that this Order dismissing the complaints becomes effective.

4. Defendants consent to satisfy any judgment that may be rendered against them in Taiwan.

IT IS FURTHER ORDERED that all actions filed in this Court against Boeing and/or United arising from the airplane crash which is the subject of this Opinion and Order not heretofore consolidated with these actions be and they are hereby so consolidated for all

purposes and are accordingly DISMISSED. All motions filed in any or all of said actions are DENIED.

No motion or motions for reconsideration will be entertained by this Court.

Defendant Boeing will prepare and lodge with the Court on or before April 26, 1982, a judgment consistent with this Opinion and Order.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUI SU NAI-CHAO, ET AL.,

Plaintiffs,

No. C-81-4235 WHO

VS.

THE BOEING COMPANY, ET AL.,

Defendants.

NOTICE OF ENTRY OF JUDGMENT OF DISMISSAL

AND CONSOLIDATED OR RELATED CASE NOS.
C-81-3702 WHO, C-81-3703 WHO, C-81-4710 WHO,
C-81-4711 WHO, C-81-4712 WHO, C-81-4713 WHO,
C-81-4714 WHO, C-81-4715 WHO, C-81-4716 WHO,
C-81-4717 WHO, C-81-4718 WHO, C-81-4719 WHO,
C-81-4720 WHO, C-81-4721 WHO, C-81-4722 WHO,
C-81-4723 WHO, C-81-4724 WHO, C-82-0401 WHO

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the above entitled Court, on April 27, 1982 executed and entered the attached Judgment of Dismissal.

Dated: April 28, 1982.

MARRON, REID & SHEEHY
MICHAEL R. MARRON

/s/

Michael R. Marron
Attorneys for Defendant
THE BOEING COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUI SU NAI-CHAO, ET AL.,

Plaintiffs,

No. C-81-4235 WHO

VS.

THE BOEING COMPANY, ET AL.,

Defendants.

JUDGMENT OF DISMISSAL

AND CONSOLIDATED OR RELATED CASE NOS.
C-81-3702 WHO, C-81-3703 WHO, C-81-4710 WHO,
C-81-4711 WHO, C-81-4712 WHO, C-81-4713 WHO,
C-81-4714 WHO, C-81-4715 WHO, C-81-4716 WHO,
C-81-4717 WHO, C-81-4718 WHO, C-81-4719 WHO,
C-81-4720 WHO, C-81-4721 WHO, C-81-4722 WHO,
C-81-4723 WHO, C-81-4724 WHO, C-82-0401 WHO

The motion of defendant THE BOEING COMPANY ("BOEING") to dismiss on ground of *forum non conveniens* or to transfer under Federal Rules of Civil Procedure Rule 12(b) and Section 1404(a) of Title 28, United States Code, also acting on behalf of defendant UNITED AIRLINES, INC. ("UNITED"), having come on before this Court for hearing on January 22, 1982, in the above captioned consolidated or related matters, and the Court having considered the motion papers, including extensive points and authorities, appendices and declarations filed by the parties, the arguments of counsel, and other written submissions, and the said defendants having filed undertakings satisfactory to the Court, pursuant to Opinion and Order of this Court filed April 13, 1982, showing that:

1. The courts of Taiwan have, and will assert, juris-

diction over these actions if properly filed by plaintiffs in Taiwanese courts in compliance with Taiwanese law;

2. Defendants will submit themselves to the jurisdiction of the Taiwanese court, and will make their employees available to testify in Taiwan;

3. Defendants agree to waive any statute of limitations claims arising from the date that these actions were filed to the date that this Order dismissing the complaints becomes effective;

4. Defendants consent to satisfy any judgment that may be rendered against them in Taiwan;

and the Court being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that the said motion to dismiss on grounds of *forum non conveniens* be granted and that the above consolidated and related cases, and each of them, be, and the same hereby are, DISMISSED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all actions filed in or hereinafter transferred to this Court arising from the airplane crash which is the subject of this litigation, not heretofore consolidated with these actions, be and they are hereby so consolidated for all purposes and are accordingly DISMISSED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other motions filed in any or all of said actions be and the same hereby are DENIED.

Dated: 27 April 1982.

/s/ WILLIAM H. ORRICK

Judge, United States District Court

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NINA CHENG, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF THOMAS T. O. CHENG, DECEASED, ET AL.,
Plaintiffs-Appellants,
CA Nos. 82-4267, 82-4283, 82-4284, and 82-4288 through 82-4302

VERSUS

THE BOEING COMPANY, ET AL.,
Defendants-Appellees.
DC Nos. CV-81-4710 through 4724 and 81-4235 (Northern California)

SHUNSAKU HARADA AND MASA HARADA, IN THEIR INDIVIDUAL CAPACITIES AND AS HEIRS AT LAW AND LEGAL SUCCESSORS OF AKIKO HARADA, DECEASED, ET AL.,
Plaintiffs-Appellants,

VERSUS

THE BOEING COMPANY, ET AL.,
Defendants-Appellees.

LUI SU NAI-CHAO, ET AL.,
Plaintiffs-Appellants,

VERSUS

THE BOEING COMPANY, ET AL.,
Defendants-Appellees.

Before: MERRILL, SNEED, and FARRIS, Circuit Judges.

The petitions for rehearing filed July 5, 1983 and July 8, 1983 are denied.

APPENDIX E

Excerpts from Statutes and Treaties

Federal Aviation Act, 49 U.S.C. §§ 1423, 1425, 1428-1430

Taiwan Relations Act, Pub. Law 96-8 (1979), sec. 4(b)7, 93 Stat 16 [22 U.S.C. § 3303(b)(7)] and sec. 4(c) [22 U.S.C. § 3303(c)]; Sec. 15(2) [22 U.S.C. § 3314(2)]

Treaty of Friendship, Commerce and Navigation Between the United States of America and The Republic of China (1974), Art. VI, § 4

FEDERAL AVIATION ACT

49 § 1423. Aircraft certificates

Authorization to issue; application; investigation; tests; issuance of type certificate

(a)(1) The Administrator is empowered to issue type certificates for aircraft, aircraft engines, and propellers; to specify in regulations the appliances for which the issuance of type certificates is reasonably required in the interest of safety; and to issue such certificates for appliances so specified.

(2) Any interested person may file with the Administrator an application for a type certificate for an aircraft, aircraft engine, propeller, or appliance specified in regulations under paragraph (1) of this subsection. Upon receipt of an application, the Administrator shall make an investigation thereof and may hold hearings thereon. The Administrator shall make, or require the applicant to make, such tests during manufacture and upon completion as the Administrator deems rea-

sonably necessary in the interest of safety, including flight tests and tests of raw materials or any part or appurtenance of such aircraft, aircraft engine, propeller, or appliance. If the Administrator finds that such aircraft, aircraft engine, propeller, or appliance is of proper design, material, specification, construction, and performance for safe operation, and meets the minimum standards, rules, and regulations prescribed by the Administrator, he shall issue a type certificate therefor. The Administrator may prescribe in any such certificate the duration thereof and such other terms, conditions, and limitations as are required in the interest of safety. The Administrator may record upon any certificate issued for aircraft, aircraft engines, or propellers, a numerical determination of all of the essential factors relative to the performance of the aircraft, aircraft engine, or propeller for which the certificate is issued.

Production certificates

(b) Upon application, and if it satisfactorily appears to the Administrator that duplicates of any aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued will conform to such certificate, the Administrator shall issue a production certificate authorizing the production of duplicates of such aircraft, aircraft engines, propellers, or appliances. The Administrator shall make such inspection and may require such tests of any aircraft, aircraft engine, propeller, or appliance manufactured under a production certificate as may be necessary to assure manufacture of each unit in conformity with the type certifi-

cate or any amendment or modification thereof. The Administrator may prescribe in any such production certificate the duration thereof and such other terms, conditions, and limitations as are required in the interest of safety.

Airworthiness certificates

(c) The registered owner of any aircraft may file with the Administrator an application for an airworthiness certificate for such aircraft. If the Administrator finds that the aircraft conforms to the type certificate therefor, and, after inspection, that the aircraft is in condition for safe operation, he shall issue an airworthiness certificate. The Administrator may prescribe in such certificate the duration of such certificate, the type of service for which the aircraft may be used, and such other terms, conditions, and limitations, as are required in the interest of safety. Each such certificate shall be registered by the Administrator and shall set forth such information as the Administrator may deem advisable. The certificate number, or such other individual designation as may be required by the Administrator, shall be displayed upon each aircraft in accordance with regulations prescribed by the Administrator.

Pub.L. 85-726, Title VI, § 603, Aug. 23, 1958, 72 Stat. 776.

49 § 1425. Maintenance of equipment in air transportation; duty of carriers and airmen; inspection of aircraft and equipment

(a) It shall be the duty of each air carrier to make, or cause to be made, such inspection, maintenance,

overhaul, and repair of all equipment used in air transportation as may be required by this chapter, or the orders, rules, and regulations of the Administrator issued thereunder. And it shall be the duty of every person engaged in operating, inspecting, maintaining, or overhauling equipment to observe and comply with the requirements of this chapter relating thereto, and the orders, rules, and regulations issued thereunder.

(b) The Administrator shall employ inspectors who shall be charged with the duty (1) of making such inspections of aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture, and while used by an air carrier in air transportation, as may be necessary to enable the Administrator to determine that such aircraft, aircraft engines, propellers, and appliances are in safe condition and are properly maintained for operations in air transportation; and (2) of advising and cooperating with each air carrier in the inspection and maintenance thereof by the air carrier. Whenever any inspector shall, in the performance of his duty, find that any aircraft, aircraft engine, propeller, or appliance, used or intended to be used by any air carrier in air transportation, is not in condition for safe operation, he shall so notify the carrier, in such form and manner as the Administrator may prescribe; and, for a period of five days thereafter, such aircraft, aircraft engine, propeller, or appliance shall not be used in air transportation, or in such manner as to endanger air transportation, unless found by the Administrator or his inspector to be in condition for safe operation.

Pub.L. 85-726, Title VI, § 605, Aug. 23, 1958, 72 Stat. 778.

49 § 1428. Form of applications for certificates

Applications for certificates under this subchapter shall be in such form, contain such information, and be filed and served in such manner as the Administrator may prescribe, and shall be under oath whenever the Administrator so requires.

Pub.L. 85-726, Title VI, § 608, Aug. 23, 1958, 72 Stat. 779.

49 § 1429. Reinspection or reexamination; amendment, suspension, or revocation of certification

Procedure; notification; hearing; appeal to National Transportation Safety Board; judicial review

(a) The Administrator may, from time to time, reinspect any civil aircraft, aircraft,[1] engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection or reexamination, or if, as a result of any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate. Prior to amending, modifying, suspending, or revoking any of the foregoing certificates, the Administrator shall advise the holder thereof as to any charges or other reasons relied

upon by the Administrator for his proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order of the Administrator under this section may appeal the Administrator's order to the National Transportation Safety Board and the National Transportation Safety Board may, after notice and hearing, amend, modify, or reverse the Administrator's order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the Administrator's order. In the conduct of its hearings the National Transportation Safety Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the National Transportation Safety Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the National Transportation Safety Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the National Transportation Safety Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the National Transportation Safety Board's order may obtain judicial review of said order under the provisions of section 1486 of this title, and the Administrator shall be made a party to such proceedings.

Violation of certain laws

(b) The Administrator, in his discretion, may issue

an order amending, modifying, suspending, or revoking any airman certificate upon conviction of the holder of such certificate of any violation of subsection (a) of section 742j-1 of Title 16, regarding the use or operation of an aircraft.

Pub.L. 85-726, Title VI, § 609, Aug. 23, 1958, 72 Stat. 779; Pub. L. 92-159, § 2(a), Nov. 18, 1971, 85 Stat. 481; Pub.L. 92-174, § 6, Nov. 27, 1971, 85 Stat. 492.

49 § 1430. Violations; exemption of foreign aircraft and airmen

(a) It shall be unlawful—

(1) For any person to operate in air commerce any civil aircraft for which there is not currently in effect an airworthiness certificate, or in violation of the terms of any such certificate;

(2) For any reason to serve in any capacity as an airman in connection with any civil aircraft, aircraft engine, propeller or appliance used or intended for use, in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of any term, condition, or limitation thereof, or in violation of any order, rule, or regulation issued under this subchapter;

(3) For any reason to employ for service in connection with any civil aircraft used in air commerce an airman who does not have an airman certificate authorizing him to serve in the capacity for which he is employed;

(4) For any person to operate as an air carrier without an air carrier operating certificate, or in violation of the terms of any such certificate;

(5) For any person to operate aircraft in air commerce in violation of any other rule, regulation, or certificate of the Administrator under this subchapter;

(6) For any person to operate a seaplane or other aircraft of United States registry upon the high seas in contravention of the regulations proclaimed by the President pursuant to section 143 of Title 33;

(7) For any person holding an air agency or production certificate, to violate any term, condition, or limitation thereof, or to violate any order, rule, or regulation under this subchapter relating to the holder of such certificate;

(8) For any person to operate an airport serving air carriers certificated by the Civil Aeronautics Board without an airport operating certificate, or in violation of the terms of any such certificate; and

(9) For any person to manufacture, deliver, sell, or offer for sale, any aviation fuel or fuel additive in violation of any regulation prescribed under section 1421 (d) of this title.

(b) Foreign aircraft and airmen serving in connection therewith may, except with respect to the observance by such airmen of the air traffic rules, be exempted from the provisions of subsection (a) of this section, to the extent, and upon such terms and conditions, as may be prescribed by the Administrator as being in the interest of the public.

Pub.L. 85-726, Title VI, § 610, Aug. 23, 1958, 72 Stat. 780; Pub.L. 91-258, Title I, § 51(b)(3), May 21, 1970, 84 Stat. 235; Pub.L. 91-604, § 11(b)(2), Dec. 31, 1970, 84 Stat. 1705.

Public Law 96-8 [H.R. 2479]; April 10, 1979

TAIWAN RELATIONS ACT

* * *

22 USC 3303. 93 Stat. 15, 16

Sec. 4. (b) The application of subsection (a) of this section shall include, but shall not be limited to, the following:

* * *

(7) The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws of the United States, shall not be abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition.

* * *

93 Stat. 16. Treaties and other international agreements, congressional approval.

(c) For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until termianted in accordance with law.

* * *

22 USC 3314. 93 Stat. 20, 21

Sec. 15. For purpose of this Act—

* * *

"Taiwan."

(2) the term "Taiwan" includes, as the context may

require, the islands of Taiwan and the Pescadores, the people on those islands, corporations and other entities and associations created or organized under the laws applied on those islands, and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and any successor governing authorities (including political subdivisions, agencies, and instrumentalities thereof).

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF CHINA

Article VI

Access to courts of justice.

4. The nationals, corporations and associations of either High Contracting Party shall enjoy freedom of access to the courts of justice and to administrative tribunals and agencies in the territories of the other High Contracting Party, in all degrees of jurisdiction established by law, both in pursuit and in defense of their rights; shall be at liberty to choose and employ lawyers, interpreters and representatives in the prosecution and defense of their rights before such courts, tribunals and agencies; and shall be permitted to exercise all these rights and privileges, in conformity with the applicable laws and regulations, if any, which are or may hereafter be enforced by the duly constituted authorities, on terms no less favorable than the terms which are or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party and no less favorable than are or may hereafter

be accorded to the nationals, corporations and associations of any third country. Moreover, corporations and associations of either High Contracting Party which do not have a permanent establishment, branch or agency within the territories of the other High Contracting Party shall be permitted to exercise the rights and privileges accorded by the preceding sentence upon the filing, at any time prior to appearance before such courts, tribunals or agencies, of reasonable particulars required by the laws and regulations of such other High Contracting party without any requirement of registration or domestication. In the case of any controversy susceptible of settlement by arbitration, which involves nationals, corporations or associations of both High Contracting Parties and is covered by a written agreement for arbitration, such agreement shall be accorded full faith and credit by the courts within the territories of each High Contracting Party, and the award or decision of the arbitrators shall be accorded full faith and credit by the courts within the territories of the High Contracting Party in which it was rendered, provided the arbitration proceedings were conducted in good faith and in conformity with the agreement for arbitration.

APPENDIX F

Claimants Who Are U.S. Citizens

1. Mrs. Frances Marrs, U.S. citizen, residing with her husband at the time of his death in Vancouver, Washington, now residing in Portland, Oregon—the surviving widow of her late husband, Gerald Marrs, Jr., also U.S. citizen and lifelong resident of the State of Washington.
2. Mrs. Y. L. Wang, U.S. citizen and resident of West Sacramento, California, surviving mother of decedent, John Wang, permanent resident of the United States whose application for citizenship, filed in July of 1981, was pending at the time of the crash.
3. Linda Wang, U.S. citizen and resident of West Lafayette, Indiana, surviving sister of decedent, John Wang, permanent resident of U.S.
4. Nellie Wang Lin, U.S. citizen and resident of West Sacramento, California, surviving sister of decedent, John Wang, permanent resident of U.S.
5. Richard Chow, U.S. citizen and resident of Forest Hills, New York, surviving son of decedent, Thomas S. K. Chow, permanent resident of the U.S. and also residing at Forest Hills, New York prior to his death.
6. Mary Chow, U.S. citizen and resident of Forest Hills, New York—daughter-in-law of decedent, Thomas S. K. Chow.
7. Lauren Chow, U.S. citizen and resident of Forest Hills, New York—granddaughter of decedent, Thomas S. K. Chow.

8. Raymond Chow, U.S. citizen and resident of Forest Hills, New York—grandson of decedent, Thomas S. K. Chow.
9. Karen Chow, U.S. citizen and resident of Forest Hills, New York—granddaughter of decedent, Thomas S. K. Chow.

Claimants Who Are Permanent U.S. Residents

1. Mrs. Margaret Rippin, U.S. permanent resident—surviving dependent wife of Dennis Rippin (Canadian citizen), and resident of Orange County, California since 1971.
2. Ying Chiuen Wang, U.S. permanent resident and resident of West Sacramento, California—surviving father of decedent, John Wang, permanent resident of U.S. whose application for citizenship, filed in July of 1981, was pending at the time of the crash.
3. Soo Jin Sze, U.S. permanent resident and resident of Los Angeles, California—surviving widow of decedent, James Nee Sze, U.S. permanent resident and resident of Los Angeles, California until his death.
4. Eric Sze, U.S. permanent resident and resident of Los Angeles, California—surviving minor son of decedent, James Nee Sze.
5. Steve Sze, U.S. permanent resident and resident of Los Angeles, California—surviving minor son of decedent, James Nee Sze.
6. Angela Sze, U.S. permanent resident and resident of Los Angeles, California—surviving minor daughter of decedent, James Nee Sze.

7. Yin Lin Chow, U.S. permanent resident and resident of Forest Hills, New York—surviving widow of decedent, Thomas S, K. Chow permanent resident of the U.S. and also residing at Forest Hills, New York prior to his death.
8. Ng Chin Ho, U.S. permanent resident and resident of Elmhurst, New York—surviving mother of decedent, Lee Hui Shaing.
9. Lee Wai Lan, U.S. permanent resident and resident of Elmhurst, New York—surviving sister of decedent, Lee Hui Shaing.
10. Lee Wai Chin, U.S. permanent resident and resident of Elmhurst, New York—surviving sister of decedent, Lee Hui Shaing.
11. Lily Lai, permanent resident and resident of San Francisco, California—surviving sister of decedent, K. N. Lai.
12. Peter Chang, U.S. permanent resident and resident of San Francisco, California—surviving brother-in-law of decedent, K. N. Lai.

APPENDIX G

Marron Letter, 4/8/83 to 9th Circuit

April 8, 1983

Mr. Phillip Winberg
Clerk of Court
Ninth Circuit Court of Appeals
P.O. Box 547
San Francisco, CA 94101

Re: Nina Cheng, et al. v. Boeing Co., et al. Nos. 82-4267, 82-4283, 82-4284, 82-4288 through 82-4302
Wang Yin Chieun, et al. v. Boeing Co., et al. Nos. 83-1563, 83-1564, 83-1565

Dear Sir:

This letter is submitted by defendant-appellee The Boeing Company in order to apprise the Court of additional authorities and recent developments since the filing of its appellate brief. The foregoing actions were consolidated for purposes of this appeal by orders of the Court dated August 17, 1982 and February 4, 1983.

These consolidated appeals involve wrongful death actions brought on behalf of 97 passengers killed in the crash of a Far Eastern Air Transport aircraft near Mao-Li Shien, Taiwan, Republic of China. The deceased passengers involved in these actions include 78 Chinese, 18 Japanese, 1 Canadian and 2 American citizens (Clowes, Grossman). The actions involving the American passengers, *Garth A. Clowes, et al. v. Boeing Co.* No. 82-4284 and *Kim F. Grossman, et al. v. Boeing Co.* No. 83-1565, have been resolved. Plaintiffs suing for the deaths of these American decedents have

agreed to dismiss their appeals and the underlying actions against all defendants.

With the dismissal of Clowes and Grossman, there remain actions pending before this Court on behalf of 95 passengers, all of whom were Chinese, Japanese or Canadian citizens. ECR 504.*

In their reply brief, appellants refer to certain actions arising out of the FEAT accident that are pending in other courts. These actions are not part of these consolidated appeals and are not before this court. However, in order to clarify the record, we wish to report recent developments in these cases. The only such action which was pending in a federal court was *Delgadillo v. Boeing Co., et al.*, (C.D. Cal., No. CV 82-5342 (LEW) (PX)), an action brought on behalf of a single American man, Frank Servin. As already reported by counsel for FEAT by letter to this Court dated February 16, 1983, the district court in *Delgadillo* dismissed FEAT from the case on the ground of lack of personal jurisdiction. That action has been resolved and will be dismissed as to all remaining defendants.

Appellants also refer to an action pending in Los Angeles Superior Court entitled *Marrs v. Boeing, et al.* Boeing first learned of this action by reading appellants' reply brief. To date, the complaint has not been served

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* In Boeing's appellate brief, Boeing reported the citizenship of the 110 passengers aboard the aircraft as 87 citizens and residents of Taiwan, 18 citizens of Japan, 4 citizens of Canada and 1 citizen of the United States. App. Br. at 5. This statement erroneously transposed the numbers for the citizens of Canada and United States. In fact, there were 87 Taiwanese, 18 Japanese, 1 Canadian and 4 Americans. ECR 753.

upon Boeing nor, to Boeing's knowledge, on any other defendant.

Both appellants and appellees refer in their appellate briefs to the decision of the Seventh Circuit Court of Appeals in *Macedo v. Boeing Co.*, 693 F.2d 683 (7th Cir. 1982). In *Macedo*, the appellate court concluded that the district court had not given consideration to several specific factors relative to the forum non conveniens inquiry, and remanded the actions. Since the remand, defendants have renewed motions for forum non conveniens dismissal, focusing on the specific factors enumerated by the Court of Appeals, and the district court has set a briefing schedule. These motions have now been fully briefed, and the district court has scheduled a hearing for April 18, 1983 to resolve these motions.

Very truly yours,

/s/

Michael R. Marron, pc.
Attorneys for Defendant-
Appellee The Boeing Company

MRM/jan
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APPENDIX H

Other Pertinent Correspondence from and to Ninth Circuit

Office of the Clerk to All Counsel, April 26, 1983

Dué, Dodson, deGravelles, Robinson & Caskey to Senior Deputy Clerk, May 9, 1983

Marron, Reid & Sheey to Clerk, May 9, 1983

Dué, Dodson, deGravelles, Robinson & Caskey to Senior Deputy Clerk, May 16, 1983

April 26, 1983

To All Counsel of Record in *Cheng v. Boeing Co.*, Nos. 82-4267, 82-4283/84, 82-4288/89, 82-4290-4302

Dear Counsel:

Counsel are requested to advise the Court in writing, within 14 days from the date of this letter, of the number of United States citizens and United States residents who are currently involved as plaintiffs in this litigation.

Very truly yours,

Phillip B. Winberry
Clerk of Court

/s/ ROGER T. RITTER
Senior Deputy Clerk

RTR/rk

May 9, 1983

Mr. Roger T. Ritter
Senior Deputy Clerk
Office of the Clerk
United States Court of Appeals
for the Ninth Circuit
Post Office Box 547
San Francisco, CA 94101

RE: U.S. Court of Appeals Docket Number 82-4283 (previously designated 82-4282): Lui Su Nai-Chao, et al vs. The Boeing Company, et al, consolidated with Docket Numbers 82-4267, 82-4284, and 82-4288 through 82-4302

Honorable Sir:

With reference to the Court's letter request of April 26, 1983, the following is offered on behalf of certain of the plaintiffs-appellants. We construe the request of the Court to include plaintiffs involved in litigation involving various aspects of the subject air crash, not simply plaintiffs confined to the above enumerated cases on appeal.

1. In the above captioned appeal, the death claim of Mr. Dennis Rippin is still pending and has not been compromised. The decedent was a Canadian citizen permanently residing in the United States. The technical party plaintiff is the estate of Dennis Rippin which has been opened to probate in Orange County, California. The survivors of Dennis Rippin are permanent residents of the United States who have been residing in Orange County, California since 1962.

2. Although not a numbered case on appeal above captioned, Civil Action 82-4586(WHO), styled "Wang Yin Chiuen, et al vs. The Boeing Company, et al," was dismissed by the same court involved in the above captioned cases, and by agreement of counsel is being held in abeyance pending the outcome of this appeal. The decedent involved in that case was a permanent United States resident who had recently applied for U.S. citizenship. The party plaintiffs surviving the decedent are United States citizens.

3. Pending in the Superior Court, State of California, County of Los Angeles, is case number C422709, styled, "Frances Marrs, et al vs. The Boeing Company, et al." Mrs. Marrs, a United States citizen brings suit against The Boeing Company and United Airlines, Inc. for the death of her husband, a United States citizen, on grounds identical to those in the above captioned appeals. In oral argument, undersigned counsel explained to the Court that representation of Mrs. Marrs had been requested after the appellate controversy herein had begun, to the end that Mrs. Marrs' suit was filed in state court only as an interim measure pending remand of these pending cases to federal district court. Mrs. Marrs is a life-long resident of the State of Oregon.

4. In the Superior Court, State of California, County of Los Angeles, suit number C41-7395, is believed to be currently pending relative to the claim of Pacific Indemnity, Inc. to recoup death and funeral benefits paid in conjunction with the claims of Clowes and Rippin from The Boeing Company and United Air-

lines, Inc. Pacific Indemnity, Inc. is a United States corporation.

5. Relative to the aforementioned case of Frances Marrs pending in the Superior Court of California, County of Los Angeles, Industrial Indemnity Company, a United States corporation, has filed a Notice of Claim of Lien seeking to recoup death and funeral benefits paid in conjunction with the Marrs claim from The Boeing Company and United Airlines, Inc.

Very truly yours,

/s/ PAUL H. DUÉ

PHD: lmw

cc: Mr. Norman Jensen
Mr. Ian Herzog
Mr. Michael R. Marron
Mr. Jeffrey L. Bornstein
Mr. Marc S. Moller
Mr. Frank Silane
Mr. Keith Gerrard

May 9, 1983

Mr. Phillip Winberg
Clerk of Court
Ninth Circuit Court of Appeals
P.O. Box 547
San Francisco, CA 94101

Re: Nina Cheng, et al. v. Boeing Co., et al. Nos. 82-4267-, 82-4283, 82-4284, 82-4288 through 83-4302
Wang Yin Chiuen, et al. v. Boeing Co., et al. Nos. 83-1563, 83-1565

Dear Sir:

This letter is submitted by defendant-appellee The Boeing Company in response to your letter of April 19, 1983 requesting information regarding the number of United States citizens and residents who are currently involved in the above-titled litigation.

This response is limited to the actions before the Court in these consolidated appeals, including Nos. 82-4267, 82-4283, 82-4284, 82-4288 through 83-4302, 83-1563 and 83-1565. These consolidated appeals presently involve claims by 555 plaintiffs suing on behalf of 94 decedents.

1. None of the 94 decedents was a citizen of the United States.

2. According to the pleadings, there are no cases before the Court that involve United States citizens as plaintiffs.

3. There are only two claims that involve United States residents as plaintiffs. These are:

(a) *Decedent James Nee Sze* (No. 82-4283). Accord-

ing to the complaint, six (6) plaintiffs, all Taiwanese citizens, are pursuing a claim on behalf of decedent Sze. Four (4) of these six Taiwanese plaintiffs are alleged to be residents of the United States (Excerpt of Clerk's Record ("ECR") 503).

(b) *Decedent Dennis Rippin* (No. 82-4283). All of the three plaintiffs in this action are citizens of Canada.[1] One (1) of these three (3) Canadian plaintiffs, Mrs. Rippin, is alleged to be a resident of the United States. ECR 504. The other two plaintiffs are citizens and residents of Canada. ECR 814.

Thus, of the 555 plaintiffs before the Court, 5 (less than 1 percent) are alleged on the pleadings to be United States residents. Each of these 5 plaintiffs is a foreign citizen.

This Court has already been informed of the cases involving United States decedents that have been resolved and dismissed. These cases are not included in the above figures. See Letter of April 8, 1983 from Michael Marron to the Court.

4. Two other claims should be mentioned:

(a) *Decedent Thomas Chow* (No. 82-4283). Decedent Chow is alleged in the complaint to have been a citizen and resident of Taiwan, and the personal representative of his estate, Yin Lin Chow, is alleged to be a citizen and resident of Taiwan. ECR 498. Four additional plaintiffs, including a Richard Chow and Richard

---

[1] The complaint incorrectly alleges that these three plaintiffs are citizens of the United States. ECR 504. This statement was later corrected by plaintiffs' counsel in the court below. ECR 814.

Chow's three children, are alleged to be United States citizens and residents. *Ibid.* However, no notice of appeal from the order below was filed by any of the Chow plaintiffs. See Notice of Appeal and list of appealing plaintiffs therein. ECR 908-13. Thus, the Chow claim is not properly before this Court.[2]

(b) *Decedent John Wang* (No. 82-4586). The complaint in this related case (*Wang Yin Chiuen v. Boeing*) does not specify the citizenship or residence of the plaintiffs. From the seating chart for the accident flight it appears that decedent Wang was a Chinese passenger. *See* ECR 735-36. Counsel for certain of the plaintiffs, but *not* for the plaintiffs in the *Chiuen* action, have speculated as to the citizenship of the Chiuen plaintiffs. *See* Reply Brief on Behalf of Certain of the Plaintiffs-Appellants at p. 11. We have no basis for responding to such speculation. However, we note that the four (4) plaintiffs in Chiuen include decedent's mother, father and two sisters. Under the California wrongful death statute, the sisters are not "heirs" and would have no standing to pursue claims, since the mother and father of the decedent are plaintiffs. *See*

---

[2] Even if the Chow claim were before the Court, the Chow plaintiffs, who are allegedly United States citizens, have no standing under the California wrongful death statute to pursue a claim. Since the personal representative of the estate, who is a Taiwanese citizen-resident, has sued, additional claims by decedent's heirs are superfluous. Calif. Civ. Pro. § 337. The three minor children have no standing as plaintiffs for an additional reason. They are alleged to be the children of Richard Chow, *not the decedent Thomas Chow*, and accordingly are not decedent's "heirs" and cannot sue for his death. Calif. Civ. Pro. § 337, Calif. Prob. Code § 220 *et seq.*

Calif. Prob. Code § 225; *Rothman v. United States*, 434 F.Supp. 13, 17 (C.D. Cal. 1977).

Very truly yours,

/s/

Michael R. Marron, pc.
Attorneys for Defendant-
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MRM/jan

cc: All Counsel

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May 16, 1983

FEDERAL EXPRESSED

Mr. Roger T. Ritter
Senior Deputy Clerk
Office of the Clerk
United States Court of Appeals
for the Ninth Circuit
Post Office Box 547
San Francisco, CA 94101

RE: U. S. Court of Appeals Docket Number 82-4283 (previously designated 82-4282): Lui Su Nai-Chao, et al. vs. The Boeing Company, et al, consolidated with Docket Numbers 82-4267, 82-4284, and 82-4288 through 82-4302

Honorable Sir:

Counsel on behalf of certain of the plaintiffs-appellants have heretofore responded formally to the Court's letter request of April 26, 1983, regarding information concerning American plaintiffs and permanent residents associated with the above captioned matters. As argumentative as counsel for The Boeing Company's response date May 9, 1983 was, it nevertheless leads plaintiffs-appellants to make two further observations which may be of assistance to the Court with regard to claims of American residents not mentioned in our earlier response:

6. Counsel for The Boeing Company rightly identifies the death claim of Thomas S. K. Chow as one involving American citizens and residents as party plaintiffs. Although Mr. Thomas Chow was a citizen of the Republic of China, he is survived by Richard, Lauren, Raymond, Karen and Mary Chow, all citizens and domiciliaries of the State of New York. Richard Chow and Mary Chow are majors and appear as party plaintiffs, while the minors Lauren, Raymond and Karen Chow are represented by their guardian ad litem, Richard Chow, a citizen and domiciliary of the State of New York. Apparently, this claim was not included in the above captioned appeals as an over-sight. However, these American

resident party plaintiffs have identical claims pending in the Superior Court of California, County of Los Angeles, in Case Number C422709 along with the United States citizen Frances Marrs.

7. A significant claim of American resident party plaintiffs not heretofore mentioned by either the undersigned or counsel for The Boeing Company is with regard to the decedent James Nee Sze. Although Mr. Sze was a citizen of the Republic of China, he and his entire family were permanent residents of the United States of American residing in Los Angeles, California, at the time of his death. He is survived by a wife, Soo Jin Sze and three minor children, Eric, Steve and Angela Sze. (Excerpts of Record, p. 503.) The claims of these permanent United States residents are properly before this Court on appeal.

Certain of counsel for The Boeing Company's statements concerning the John Wang case are in error. Undersigned took over the representation of plaintiffs relative to this claim by letter dated January 3, 1983. The information brought to the Court's attention concerning the United States citizenship of the plaintiffs associated with that claim as well as the permanent resident status of the decedent came directly from the plaintiffs.

In closing, perhaps one further observation is in order with regard to The Boeing Company's response dated May 9, 1983. In confining its remarks to "the pleadings," and in characterizing statements concerning other plaintiffs' United States citizenship as "speculation," The Boeing Company dramatically punctuates the actual lack of information which the Trial Court had

before it in rendering the decision below and illustrates the value which a modicum of discovery would have had in input to the Trial Court's decision.

Very truly yours,

/s/

Paul H. Dué

PHD:lmw

copy: Mr. Norman Jensen
Mr. Ian Herzog
Mr. Michael R. Marron
Mr. Jeffrey L. Bornstein
Mr. Marc S. Moller
Mr. Fank Silane
Mr. Keith Gerrard

APPENDIX I

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Numbers
82-4267, 82-4283, 82-4284
and
82-4288 through 82-4302

NINA CHENG, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF THOMAS T. O. CHENG,
DECEASED, ET AL,
Plaintiffs-Appellants,

VERSUS

THE BOEING COMPANY, ET AL,
Defendants-Appellees.

Appeal from the United States District Court in and for the North District of California The Honorable William H. Orrick Presiding

---

PETITION FOR REHEARING OF CERTAIN OF THE PLAINTIFFS-APPELLANTS

DUÉ, DODSON, DEGRAVELLES,
ROBINSON & CASKEY

Attorneys for Plaintiffs-Appellants

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CITATIONS:

Macedo vs. Boeing Co., 693, F.2d 683 (7th Cir., 1982) 113
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Numbers 82-4267, 82-4283, 82-4284 and 82-4288 through 82-4302

NINA CHENG, ETC., ET AL
VERSUS
THE BOEING COMPANY, ET AL

Certification Required by Ninth Circuit Court of Appeals Rule 13(b)(3)

The undersigned counsel of record for certain plaintiffs-appellants certifies that the following listed parties have an interest in the outcome of this case. These representations are made to enable judges of the Court to evaluate possible disqualifications for recusal:

* * *

The Boeing Company,
The Garrett Corporation,
Company of California,
Air Research Aviation
Company,
Taiwan Fire & Marine
Insurance Company,
Pallmark International,
Inc., and
Pacific Indemnity, Inc.
The Signal Companies,
Inc.,
Air Research
Manufacturing

DUÉ, DODSON, DEGRAVELLES,
ROBINSON & CASKEY
Attorneys for Plaintiffs-Appellants

By:_____
Paul H. Dué,
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Introduction By Counsel Noting Justification For Petition For Rehearing

The record before this Court on Appeal clearly demonstrates that this Court most respectfully was in error in stating in its original Opinion "all California state litigation arising out of this air crash has been settled or dismissed [Opinion, p. 15]," and in so doing affirming the Trial Court's refusal to grant plaintiffs any discovery whatsoever in the proceedings below as well as implying the interest of judicial economy would be served in dismissing a portion of these cases to a for-

eign tribunal pursuant to *forum non conveniens* concepts. In fact, plaintiffs-appellants have demonstrated the existence of at least two separate civil actions involving American citizens now pending before separate courts in the State of California other than the cases before this Court, which parallel proceedings have not been settled and involve identical issues growing out of the subject air crash sued upon herein.

This material fact overlooked by this Honorable Court in its Opinion is critical to a proper evaluation of the Trial Court's reasoning, not only with regard to prohibiting discovery which would have revealed the existence of these cases before the Trial Court rendered its decision, but also with regard to the basic standard to be applied in a *forum non conveniens* decision itself. If defendants-appellees will necessarily have to produce voluminous discovery documents and participate in a trial on the merits in two other parallel proceedings in the State of California as well as pursuant to these cases being filed anew in the Republic of China, the basic *forum non conveniens* considerations of judicial economy and public interest fail to justify a dismissal of only certain of the cases pending to a foreign tribunal while others remain pending in other courts in the State of California. The United States Court of Appeals for the 7th Circuit in *Macedo vs. Boeing Co.*, 693 F.2d 683 (7th Cir., 1982), which decision this Court respectfully did not refer to despite an analysis by both appellants and appellees, indicated that in all points it is artificial to consider pending cases concerning one air disaster separately, and inasmuch as possible it is sensible to consider all cases together from

the standpoint of a *forum non conveniens* analysis. Plaintiffs-appellants identified herein respectfully petition the Court for a rehearing on the basis of the above material fact evidently overlooked by the Court in its original Opinion. In counsel's judgment, a rehearing on this ground alone is fully justified.

Furthermore, this Court's opinion is an apparent conflict with this Court's decision in *Nebenzahl v. Credit Suisse*, 705 F.2d 1139 (9th Cir. 1983), an opinion only recently reported. Characterizing defendant as having an "almost impossible burden in order to deny a citizen access to the courts of this country [705 F.2d 1140]," this Court has had occasion to relegate American citizens to a foreign tribunal from time to time, but no decision in the history of recorded jurisprudence of this country has ever purported to relegate an American citizen's death or injury case against an American manufacturer to a foreign tribunal without the defendant admitting liability. A rehearing on this ground of an apparent conflict in the Court's past decisions is equally justified.

The Pendency Of Other Actions
In The State of California
Involving American Citizens

In its Opinion filed herein on June 20, 1983, this Honorable Court stated the following:

> "Plaintiffs argue that discovery would hve shown that there were other lawsuits arising out of this air crash pending in California Courts and that Boeing had not raised *forum non conveniens* there as a defense. They also argue that discovery would have demonstrated that they could obtain jurisdic-

> tion over Far Eastern Air Transport because it had filed a lawsuit in California in 1975 averring in its Complaint that it was authorized to do business in California. At oral argument, however, defendants demonstrated that all California state litigation arising out of this air crash has been settled or dismissed and that the 1975 lawsuit was brought without Far Eastern's authorization or its knowledge." (Opinion, pp. 14-15).

In plaintiffs-appellants' Reply Brief on Behalf of Certain of the Plaintiffs-Appellants, several parallel civil actions pending in the State of California were identified for the Court both to punctuate the need for discovery in cases of this nature and to demonstrate to the Court the obvious inappropriateness of dismissing a portion of the cases pending in the United States in favor of a foreign tribunal while other cases pending in other courts in the State of California remain to be litigated in this country. Obviously fearing application by this Court of those principles set forth in *Macedo vs. Boeing Co.*, 693 F.2d 683 (7th Cir., 1982), in which case a critical deference was given to the existence of five Americans as party plaintiffs, the Boeing Company in the case at bar made a determined effort while these cases were on appeal to settle as many of the American claims as possible. In this connection, the Boeing Company made certain representations to the Court in oral argument that some of these parallel claims involving American citizens had been settled. However, several claims identified as pending in other courts in the State of California were not addressed by the Boeing Company, and certainly have not been settled.

In plaintiffs-appellants' Reply Brief, Pacific Indem-

nity, Inc.'s claim against The Boeing Company and United Airlines, Inc., Numbered C41-7395, pending in the Superior Court of the State of California for the County of Los Angeles was identified. See Reply Brief on Behalf of Certain of the Plaintiffs-Appellants, p. 10. This pending suit seeks to recoup nearly $100,000.00 in death and funeral benefits paid to the families of American decedents aboard the air craft in question subsequent to the disaster sued upon herein. As pointed out by plaintiffs-appellants, The Boeing Company and United Airlines, Inc, have made appearances in that litigation without even alleging improper venue or forum non conveniens.

Furthermore, in plaintiffs-appellants' Reply Brief, Suit Number C422709 pending in the Superior Court, State of California, for the County of Los Angeles, was identified. See Reply Brief of Certain of the Plaintiffs-Appellants, pp. 10-11. One of the plaintiffs in that suit is Mrs. Frances Marrs, widow of Mr. Gerald Marrs, Jr., one of the American passengers aboard the aircraft in question. Mrs. Marrs is a United States citizen residing in the State of Oregon and has filed a suit against The Boeing Company and United Airlines, Inc., *inter alia*, on the basis of negligence, strict liability and breach of warranty. Below signed counsel is trial counsel for Mrs. Marrs in that parallel court action, and The Boeing Company has not even made overtones of settlement relative to that case.

By letter dated May 16, 1983, the further claims of Richard, Lauren, Raymond, Karen and Mary Chow, all citizens and domiciliaries of the State of New York, were identified for the Court. These party plaintiffs are

survivors of Thomas S. K. Chow, one of the decedents associated with the aircraft disaster in question. The Chow family claims are all pending in the Superior Court of California, County of Los Angeles, in case number C422709, along with the claim of Mrs. Marrs previously identified. No settlement discussions have ever been initiated with regard to the Chow family's claims against The Boeing Company and United Airlines, Inc.

In the context of a *forum non conveniens* consideration, more is involved with the pendency of parallel civil actions in other courts than the consideration of discovery and the Trial Court's obvious failure to consider the parallel cases. in considering the various aspects of a *forum non conveniens* analysis, the Court necessarily should bear in mind the fact that other cases pending in other courts but within the same state may go to trial in this country notwithstanding its own decision with regard to a dismissal of certain of the cases pending before it. Thus, the Court in *Macedo vs. Boeing Co.*, 693 F.2d 683, 691 (7th Cir., 1982) stated:

> "We have analyzed the two cases as if they were one. Plaintiffs started them as one, although they separated them in order to defeat a jurisdictional challenge. It would be sensible to try them together, and it seems artificial to consider them separately."

The Court unfortunately overlooked the material fact that other cases involving the same air disaster and naming The Boeing Company and United Airlines, Inc., as defendants, are pending in other courts in the Stae of California. In having overlooked this material fact,

the Court has not addressed the apparent paradox presented where the party defendants allege convenience in litigating a portion of these claims in a foreign country while at the same time necessarily having to litigate other claims involving the same air disaster in various courts in the State of California. From the standpoint of discovery and the production of voluminous documents alone, defendants-appellees' pleas of *forum non conveniens* are hollow. If this decision is allowed to stand, the defendants will necessarily have to produce two sets of discovery documents, one in English and one in Chinese, as well as procure the attendance of witnesses pursuant to the Chinese litigation and pursuant to the litigation pending in the Courts of the State of California.

Finally, from the standpoint of judicial economy and the public interest factors relative to a *forum non conveniens* determination, the realization that parallel proceedings involving certain American plaintiffs are pending in other courts in the State of California all but negates the propriety of dismissing a portion of these claims for litigation in a foreign country.

The Apparent Conflict of This Court's Opinion with Nebenzahl v. Credit Suisse, 705 F.2d 1139 (9th Cir., 1983)

In *Nebenzahl v. Credit Suisse*, 705 F.2d 1139 (9th Cir., 1983), this Court reversed and remanded a District Court dismissal of a United States citizen's suit on the basis of *forum non conveniens* when the Order of the District Court did not manifest a thorough analysis

of the Motion at the trial level. With regard to burden of proof, this Court stated:

> "In addition to the *Gulf* factors, this circuit has suggested that a defendant seeking *forum non conveniens* dismissal must carry an 'almost impossible burden in order to deny a citizen access to the courts of this country.' [Citing *Mizokami Bros. of Arizona, Inc. v. Baychem Corp.*, 556 F.2d 975, 977 (9th Cir., 1977), Cert. denied, 436 U.S. 1035, 98 Sup.Ct. 770, 54 L.Ed. 2d 783 (1978).]." 705 F.2d 1140

Even apart from those claims of American citizens and corporations pending in other courts in the State of California related to this same air disaster, and not withstanding the representations made by The Boeing Company at oral argument, claims of American citizens and permanent residents relative to these consolidated appeals are still pending and have not been settled. The estate of Dennis Rippin of Orange County, California, is a party plaintiff in these actions relative to the death of Mr. Rippin in the subject air crash. Mr. Rippin had been a permanent resident of the United States, residing in Orange County, California, since 1962, as have been his survivors. The party plaintiffs in Civil Action 82-4586 (WHO), by agreement substantively bound to the Court's decision in these consolidated actions, are United States citizens, the decedent involved in that claim having been a permanent United States resident who had applied for U.S. citizenship prior to his death. Additionally, one of the claims presented to this Court on appeal is relative to the death of Mr. James Sze, a permanent resident of the United States at the time of his death in the subject air disaster. Mr. Sze's wife ap-

pearing as party plaintiffs, and his three minor children, are all permanent United States residents.

A careful reading of the Court's Opinion herein leads one to the observation that this Court may be unaware of the fact that it is sanctioning the widest possible application of *forum non conveniens* motions in the District Court despite this Court's own heretofore expressed reservations in sanctioning such motions when the rights of United States citizens or permanent residents are involved. Never before has an American citizen with a personal injury or death claim against an American Corporation been relegated to a completely foreign tribunal to pursue claims of a defectively manufactured American product without the American defendant having been compelled to first admit liability. The only court heretofore holding that such a relegation of rights was proper was the District Court associated with the decision in *Macedo v. Boeing Co.*, 693 F.2d 683 (7th Cir., 1982). However, the Seventh Circuit Court of Appeals forcefully reversed the Trial Court in that instance when only five American plaintiffs were involved.

Conclusion

In its Opinion, this Court went far beyond simply affirming the Trial Court. Obviously the Trial Court was without benefit of a full appreciation of the American claims involved in this case when it rendered its decision. Due to its own refusal to grant plaintiffs any discovery whatsoever, the Trial Court was completely unaware of other cases involving other American plaintiffs and growing out of the same air disaster pending in

other courts in the State of California. Likewise, the Trial Court grossly underestimated the American contacts involved in the litigation pending in the Northern District of California. Plaintiffs were never afforded at the trial court level a considered decision in light of all of the various factors presented in this case. This action must be reversed and remanded to the trial court for due consideration by the Court of the extent of American involvement in litigation pending before this and other courts in the State of California.

For the foregoing reasons, plaintiffs-appellants request that this matter be reversed and remanded to the trial court.

Respectfully Submitted:

DUÉ, DODSON, DEGRAVELLES, ROBINSON & CASKEY

Attorneys for Certain Plaintiffs-Appellants

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I mailed two copies of Petition for Rehearing of Certain of the Plaintiffs-Appellants, postage prepaid and properly addressed to the following persons, counsel on behalf of defendants-appellees and co-plaintiffs-appellants.

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Baton Rouge, Louisiana, this 4th day of July, 1983.

_____

Paul H. Dué

APPENDIX J

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81-NW-25-AD; Amdt. No. 39-4141]

Airworthiness Directives;
Boeing Model 737 Series Airplanes

Agency:

Federal Aviation Administration (FFA), DOT.

Action:

Effective date July 1, 1981.

Summary:

This amendment adds a new Airworthiness Directive (AD) which requires an inspection for cracks in the forward cargo compartment sidewall frames and skins on Boeing Model 737 series airplanes with 29,000 or more landings. Repair and rework procedures are specified along with continued inspection requirements which are required until the specified rework can be accomplished. This action is necessary because severe damage to several body frames was discovered during replacement of damaged lining panels in the lower forward cargo compartment. Integrity of the frames is necessary for maintaining the body pressurization in case of skin damage. Continued operation with a severed frame may lead to skin damage and subsequent loss of body pressurization.

Dates:

Effective dae July 1, 1981.

Addresses:

The service bulletins and documents specified in this Airworthiness Directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

For Further Information Contact:

Mr. Rodger Anderson, Airframe Branch, ANW-120S, Seattle Area Aircraft Certification Office, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

Supplementary Information:

In May 1981, during a scheduled maintenance check of a 737-200 airplane, an operator discovered severe damage to several body frames while replacing damaged lining panels in the lower forward cargo compartment. Three adjacent frames on the left side, at body stations 460, 480, and 500 were completely cracked through just above or below stringer S-22, including total fracture of the fail safe chord on two of these frames. In addition, the inboard flanges of the body station 420 frame, just above stringer S-25, and the body station 440 frame between stringers S-21 and S-23 on the left side were also cracked. On the right side, the inboard flange of the body station 500 frame was cracked above stringer S-26 and the frame at body station 500A had completely separated between stringers S-23 and S-24. All of these cracks progressed through sidewall lining panel attachment screw holes in the frame inboard flanges. The operator conducted a fleet check and found cracked flanges in the same areas

on six additional 737 planes with 21,552 to 32,639 flight hours and 34,081 to 50,345 landings. Three additional operators have reported similar frame cracking on three airplanes with 21,757 to 29,542 flight hours and 29,335 to 47,314 landings. Mandatory inspection and repair/rework is now required, since continued operation of an airplane with undetected cracked frames will result in cracked skins and potential loss of body pressurization.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires inspection and replacement or repair, as necessary, of lower forward cargo compartment sidewall frames and skins on certain Boeing Model 737 Series airplanes prior to production line number 232. A design change equivalent to Boeing Service Bulletin 737-53-1027 is incorporated in production on applicable airplanes beyond production line number 232.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Boeing: Applies to Boeing Model 737 series airplanes, certificated in all categories, prior to pro-

duction line number 232 except production line numbers 72, 84, 102, 139, 157, 173, 199, 208, 215, 223, and 230.

Upon accumulation of 29,000 landings or within the next 100 landings after the effective date of this AD, whichever is later, accomplish the inspections of either paragraph A, or B, or C:

A. (1) Conduct a close external visual inspection of the fuselage skins for cracks in the region of the frames specified by Figure 1 of Boeing Service Bulletin 737-53-1027, or later FAA approved revisions unless accomplished within the last 200 landings. If no cracks are found, reinspect at intervals not to exceed 100 landings until inspected in accordance with paragraph A.(2). If cracks are found, repair fuselage skin prior to further flight in accordance with an FAA approved method and visually inspect the fuselage frames specified by Figure 1 of Boeing Service Bulletin 737-53-1027 or later FAA approved revisions for cracks. Frames found cracked are to be replaced or repaired in accordance with paragraph D or modified in accordance with paragraph E; and

(2) Within 2,400 landings visually inspect the fuselage frames specified in A.(1) for cracks. If no cracks are found, reinspect at intervals not to exceed 9,000 landings. If cracks are found, replace or repair prior to further flight per paragraph D or modify per paragraph E.

B. X-ray inspcet for cracks in accordance with procedures described in the 737 Nondestructuve Test Manual D6-7170, subject 53-10-37, figure 12, the fuselage frames specified in paragraph A.(1), unless accom-

plished within the last 900 landings. If no cracks are found, reinspect at intervals not to exceed 2,000 landings. If cracks are found, replace or repair fuselage frames prior to further flight in accordance with paragraph D or modify per paragraph E.

C. Visually inspect the fuselage frames specified in paragraph A.(1) for cracks, unless accomplished within the last 4,900 landings. If no cracks are found reinspect at intervals not to exceed 9,000 landings. If cracks are found, replace or repair fuselage frames prior to further flight in accordance with paragraph D or modify per paragraph E.

D. Cracked fuselage frames are to be reworked in accordance with the 737 Structural Repair Manual or in a manner approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Region. These repairs do not constitute terminating action and are subject to repeat inspections of this AD until modification per paragraph E is accomplished.

E. The inspections of this AD may be terminated upon completion of the modification of frames in the forward cargo compartment area in accordance with paragraph III of Boeing S/B 737-53-1027, or later FAA approved revision, or in a manner approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Region.

F. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time-in-service by the operator's fleet average from takeoff to landing for the airplane type. Only pressurized flights need be consid-

ered when establishing number of landings on the airplane.

G. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Region, may adjust the inspection interval if the request contains substantiating data to justify the increase for that operator.

H. Aircraft may be ferried to a base for maintenance in accordance with Sections 21.197 and 21.199 of the Federal Aviation Regulations.

I. Alternate means of compliance or other actions which provide an equivalent level of safety may be used when approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the above specified alert service bulletin from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or it may also be examined at FAA Northwest Region. 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective July 1, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order

12291. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION, CONTACT."

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Seattle, Washington, on June 11, 1981.

Charles R. Foster,
Director, Northwest Region.

[FR Doc. 81-18180 Filed 6-19-81; 8:45 a.m.]

APPENDIX K

Boeing Service Bulletin No. 737-53A1027

This sheet transmits REVISION 2 dated October 16, 1981 of Service Bulletin No. 737-53A1027, "FORWARD AND AFT CARGO COMPARTMENT BODY FRAME INSPCETION, REPAIR AND MODIFICATION".

NOTE: This revision constitutes a complete reissue.

SUMMARY

This revision is issued to formalize telegraphic Revision 1 of the bulletin and provide repair kits and an alternative method of inspection.

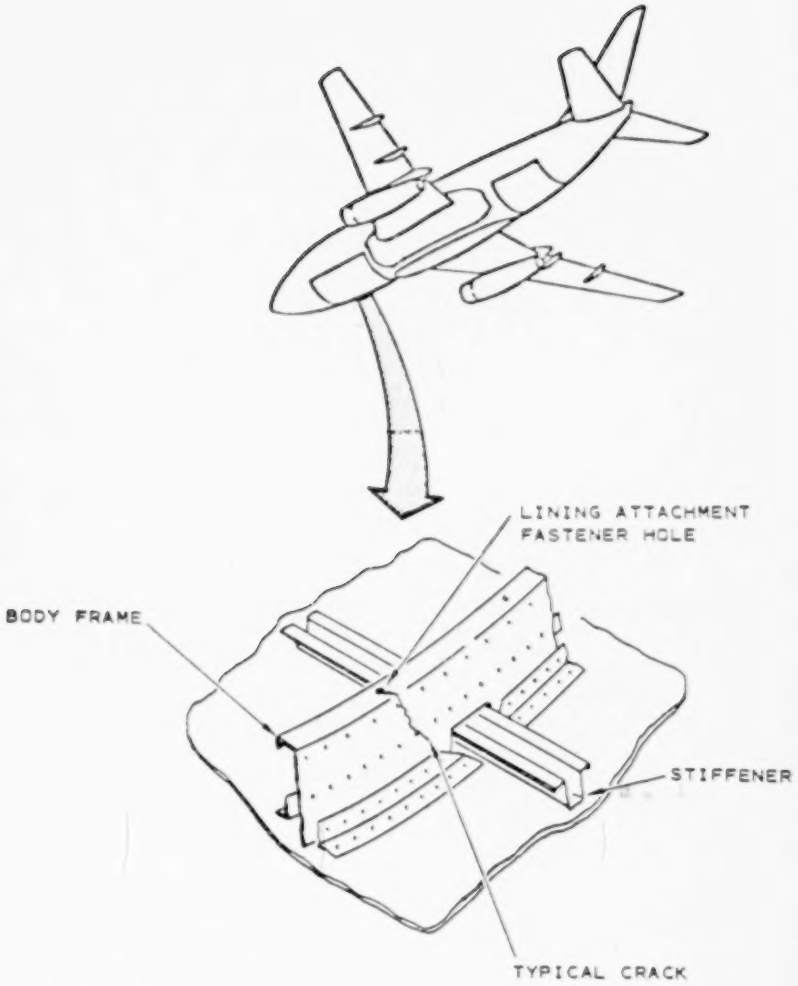
Airplanes modified per the previous releases of this bulletin do not require additional inspection or work.

Revision bars have been omitted since the entire previous issue has been rewritten.

REVISION HISTORY

Original Issue: November 3, 1971
Revision 1: May 11, 1981 (TWX M-7350-81-211)
Revision 2: October 16, 1981

SUBJECT: FORWARD AND AFT CARGO COMPARTMENT BODY FRAME INSPECTION, REPAIR AND MODIFICATION
ATA: 5311
NO: 737-53A1027
DATE: November 3, 1971
REVISION 2: October 16, 1981



BACKGROUND

Four operators have reported 16 cracked body frames in the forward cargo compartment in 10 airplanes with 29,300 to 50,300 pressurization cycles and 21,600 to 32,600 flight-hours. In four instances, the frame had completely severed. The cracks originated at

fastener holes in the frame inboard flanges for attachment of the compartment sidewall lining from Stringer 21 through Stringer 26 and are attributed to fatigue. Analysis also indicates the possibility of fatigue cracks in the aft cargo compartment body frames upon accumulation of 32,500 pressurization cycles.

ACTION (PRR 31682)

Upon accumulation of 29,000 pressurization cycles, visually x-ray or low frequency eddy-current inspect the forward cargo compartment body frames at 9000, 2000 or 9000 cycle intervals, respectively, until the frames are modified. While no special inspections of the aft cargo compartment body frames are required by this bulletin, modification of the latter frames is suggested not later than 32,500 pressurization cycles.

EFFECTIVITY

Line numbers 1 through 231

MANPOWER

	Total Man-Hours	Airplane Down-Time
Inpsection		
a. Visual	80	20 Hrs.
b. X-ray	72	24 Hrs.
c. Low Frequency Eddy-Current	6	6 Hrs.
Modification 737-100 Airplanes	124	31.0 Hrs.
Modification 737-200 Airplanes	162	40.5 Hrs.

MATERIAL INFORMATION

Kit	Price*
69-62020-1	$1794.00
69-62020-2	$1941.00

See service bulletin for repair kit prices

* See Paragraph I. F. for applicable terms and conditions.

SERVICE BULLETIN

ATA
SYSTEM: 5311
NO: 737-53A1027
DATE: November 3, 1971
REVISION 2: October 16, 1981

SUBJECT: FORWARD AND AFT CARGO COMPARTMENT BODY FRAME INSPECTION, REPAIR AND MODIFICATION

NOTE: THIS SERVICE BULLETIN IS BEING SENT TO AFFECTED OPERATORS. IF THE OPERATOR HAS LEASED AIRPLANES, THIS INFORMATION SHOULD BE FORWARDED TO THE LESSEE. IF THE OPERATOR HAS SOLD AIRPLANES WITHIN THE LAST SIX MONTHS, THIS INFORMATION SHOULD BE FORWARDED TO THE NEW OWNER, UNLESS CONFIRMATION HAS BEEN RECEIVED THAT BOEING HAS INCLUDED THE NEW OPERATOR ON THE DISTRIBUTION LIST.

I. Planning Information

A. Effectivity

1. Airplanes Affected

An equivalent change will be incorporated in production in accordance with PRR 31682 on applicable airplanes other than those listed below. Affected airplanes are divided into three groups because of differences in configuration.

2. Spares Affected

None

B. Reason

Modification of specific body frames in the forward and aft cargo compartments per this bulletin will prevent fatigue cracks in the frames. Continued operation with a cracked or severed frame may result in skin damage and loss of body pressurization.

The original issue of this bulletin resulted from analysis of cargo compartment frames on the 737 model airplane, following fatigue test results on the 727 airplanes. The analysis indicated the possibility of frame cracks occurring on the 737 airplane after 32,500 pressurization cycles.

Telegraphic Alert Revision 1 of the bulletin was issued following a report of severe damage in several frames in the lower forward cargo compartment of a 737-200 series airplane with 49,300 pressurization cycles and 32,000 flight-hours.

At the left hand side of the compartment, three

Customer Customer No.	Model & Series	Mfg. Serial No.	Registry No.
GROUP I			
CLF AIR CAL			
PA231&PA232	737-159	19679 and 19680	N472GB and N471GB
COP COPA			
PC001	737-112	19768	N46AF
DLH LUFTHANSA			
PA001	737-130	19013	D-ABEA
PA003&PA004	737-130	19015 and 19016	D-ABEC and D-ABED
PA007&PA008	737-130	19019 and 19020	D-ABEH and D-ABEI
PA010	737-130	19022	D-ABEL
PA014&PA015	737-130	19026 and 19027	D-ABEP and D-ABEQ
PA019&PA021	737-130	19031 and 19033	D-ABEU and D-ABEW
PA022	737-130	19794	D-ABEY
FAT FAR EASTERN AIR TRANSPORT			
PA002&PA005	737-130	19014 and 19017	B-2721 and B-2623

FLA AIR FLORIDA			
PC002&PC003	737-112	19769 and 19770	N40AF and N42AF
PC004	737-112	19771	N47AF
MXG GOVERNMENT OF MEXICO			
PC005	737-112	19772	TP-04
NAS NASA			
PA099	737-130	19437	N515NA
PEX PEOPLE EXPRESS AIRLINES			
PA006&PA009	737-130	19018 and 19021	N401PE and N404PE
PA011&PA012	737-130	19023 and 19024	N406PE and N407PE
PA013&PA016	737-130	19025 and 19028	N408PE and N411PE
PA017&PA018	737-130	19029 and 19030	N412PE and N413PE
PA020	737-130	19032	N415PE

Customer Customer No.	Model & Series	Mfg. Serial No.	Registry No.
GROUP II			
ANZ AIR NEW ZEALAND PG199	737-222	19758	ZK-NAM
BRI BRITANNIA PG331	737-204	19709	G-AVRL
CLF AIR CAL PG271&PG272	737-293	19306 and 19307	N461GB and N462GB
LOC LOCKHEED AIRCRAFT SERVICES PG201	737-247	19598	N4501W
PIE PIEDMONT AVIATION PG301&PG302	737-201	19418 and 19419	N734N and N735N

SAA SOUTH AFRICAN			
PG351	737-244	19707	ZS-SBL
UAL UNITED AIR LINES			
PG001-PG004	737-222	19039 thru 19042	N9001U thru N9004U
PG006-PG019	737-222	19044 thru 19057	N9006U thru N9019U
WAL WESTERN AIR LINES			
PG202	737-247	19599	N4502W

GROUP III

ABL AIR BELGIUM			
PG224	737-247	20128	C6-BEI
ALO ALOHA			
PG034	737-222	19072	N73714
PG701&PG702	737-297	20209 and 20210	N73711 and N73712
PG703	737-297	20242	N73713

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Customer Customer No.	Model & Series	Mfg. Serial No.	Registry No.
ANZ AIR NEW ZEALAND			
PG401-PG403	737-219	19929 thru 19931	ZK-NAC thru ZK-NAE
PG436	737-214	20156	ZK-NAK
PG704	737-297	20344	ZK-NAJ
ARL AER LINGUS			
PG251&PG252	737-248	19424 and 19425	EI-ASA and EI-ASB
PG253	737-248	20221	EI-ASF
PG573	737-281	20276	EI-BCR
BRI BRITANNIA			
PG036	737-222	19074	G-AZNZ
PG332	737-204	19710	G-AVRM
PJ101&PJ102	737-204	19711 and 19712	G-AVRN and G-AVRO
PJ103	737-204	20236	G-AWSY

BRT BRAATHENS			
PJ001&PJ002	737-205	19408 and 19409	LN-SUS and LN-SUP
PL803	737-2A6	20412	LN-SUG
CHI CHINA AIR			
PG571&PG572	737-281	20226 and 20227	B-1870 and B-1872
CLF AIR CAL			
PG204&PG217	737-247	19601 and 19614	N466AC and N473AC
PG222	737-247	20126	N470AC
PG273&PG274	737-293	19308 and 19309	N463GB and N464GB
PG275&PG276	737-293	19713 and 19714	N465GB and N467GB
PG438	737-214	20158	N460AC
CPA CP AIR			
PG501-PG504	737-217	19884 thru 19887	CF-CPB thru CF-CPE
PG505&PJ031	737-217	19888 and 20196	CF-CPU and CF-CPV
PJ032	737-217	20197	CF-CPZ
EGG GOVERNMENT OF EGYPT			
PG208	737-247	19605	N450BW

Customer Customer No.	Model & Series	Mfg. Serial No.	Registry No.
EGN E G AND G			
PG210&PG215	737-247	19607 and 19612	N4510W and N4515W
EPA EASTERN PROVINCIAL			
PG651&PG652	737-2E1	20396 and 20397	CF-EPL and CF-EPR
PJ072	737-2E1	20300	CF-EPO
ERA EURALAIR			
PG026&PG028	737-222	19064 and 19066	F-GCLL and F-GCSL
PG029	737-222	19067	F-GCJL
FAT FAR EASTERN AIR TRANS-PORT			
PG055&PG058	737-222	19936 and 19939	B-2601 and B-2603
PG226&PG228	737-247	20130 and 20132	B-2617 and B-2607
PG230	737-247	21034	B-2618

FLA AIR FLORIDA				
PG020&PG021	737-222	19058 and 19059	N68AF	and N69AF
PG043&PG046	737-222	19549 and 19552		and N61AF
PG047&PG048	737-222	19553 and 19554	N63AF	and N67AF
PG050	737-222	19556	N62AF	
FRO FRONTIER				
PG037&PG056	737-222	19075 and 19937	N7383F	and N7389F
PG064	737-222	19945	N7390F	
PG225&PG229	737-247	20129 and 20133	N7384F	and N7363F
PG431&PG432	737-214	19681 and 19682	N7380F	and N7387F
PG433	737-214	19920	N7388F	
PG621&PG622	737-2C0	20070 and 20071	N7378F	and N7379F
PG623	737-2C0	20072	N7372F	
PG624&PG625	737-2C0	20073 and 20074	N7370F	and N7371F
PG626-PG630	737-291	20361 thru 20365	N7373F	thru N7377F
LAM LINHAS AEREAS DE MOZAMBIQUE				
PH703&PH704	737-2B1	20280 and 20281	C9-BAA	and C9-BAB

Customer Customer No.	Model & Series	Mfg. Serial No.	Registry No.
LCO LOCKHEED AIRCRAFT SERVICES			
PG203&PG219	737-247	19600 and 19616	N4503W and N4519W
MAD AIR MADAGASCAR			
PG375	737-2B2	20231	5R-MFA
MCM JOHN W. MECOM COMPANY			
PL801	737-2A6	20194	N3333M
MXG GOVERNMENT OF MEXICO			
PG223	737-247	20127	TP-08

PIE PIEDMONT AVIATION			
PG035&PG041	737-222	19073 and 19547	N752N and N749N
PG042&PG049	737-222	19548 and 19555	N751N and N9049U
PG073	737-222	19954	N759N
PG206	737-247	19603	N758N
PG303-PG305	737-201	19420 thru 19422	N736N thru N738N
PG306&PG307	737-201	19423 and 20211	N740N and N741N
PG308-PG312	737-201	20212 thru 20216	N743N thru N747N
PG474	737-2A1	20095	N767N
PWA PACIFIC WESTERN			
PG434	737-214	19921	CF-PWM
PH701	737-275	19742	CF-PWD
SAA SOUTH AFRICAN			
PG352&PG353	737-244	19708 and 20229	ZS-SBM and ZS-SBN

Customer Customer No.	Model & Series	Mfg. Serial No.	Registry No.
TAN TAN AIRLINES			
PJ071	737-2A3	20299	HR-TNR
TAV TRANSAVIA HOLLAND			
PG059&PG074	737-222	19940 and 19955	PH-TVI and PH-TVH
UAL UNITED AIR LINES			
PG022&PG025	737-222	19060 thru 19063	N9022U thru N9025U
PG027&PG030	737-222	19065 and 19068	N9027U and N9030U
PG032&PG033	737-222	19070 and 19071	N9032U and N9033U
PG038-PG040	737-222	19076 thru 19078	N9038U thru N9040U
PG044&PG045	737-222	19550 and 19551	N9044U and N9045U
PG051-PG054	737-222	19932 thru 19935	N9051U thru N9054U
PG057	737-222	19938	N9057U
PG060-PG063	737-222	19941 thru 19944	N9060U thru N9063U
PG065-PG072	737-222	19946 thru 19953	N9065U thru N9072U
PG075	737-222	19956	N9075U

UTC UNITED TECHNOLOGIES			
PL802	737-2A6	20195	N1288
VSP VASP			
PG435&PG437	737-214	20155 and 20157	PP-SMQ and PP-SMR
PG439&PG440	737-214	20159 and 20160	PP-SMS and PP-SMT
PG471-PG473	737-2A1	20092 thru 20094	PP-SMA thru PP-SMC
PG475	737-2A1	20096	PP-SME
WAL WESTERN AIR LINES			
PG205&PG207	737-247	19602 and 19604	N4505W and N4507W
PG209	737-247	19606	N4509W
PG211-PG214	737-247	19608 thru 19611	N4511W thru N4514W
PG216&PG218	737-247	19613 and 19615	N4516W and N4518W
PG220&PG221	737-247	19617 and 20125	N4520W and N4521W

adjacent frames at Body Stations 460, 480 and 500 were completely severed just above or below Stringer 22, including total fracture of the fail-safe chord on two of the frames. At Body Station 420 and 440, the inboard flanges of the frame was cracked just above Stringer 25 and between Stringers 21 and 23, respectively.

At the right hand side of the compartment, the frame at Body Station 500A was completely severed between Stringers 23 and 24 and the inboard flange of the frame at Body Station 500 was cracked just above Stringer 26.

All of the cracks were through the sidewall panel attach screw holes in the frame inboard flanges and were found during maintenance check when replacing damaged sidewall panels.

During fleet check, the same operator found cracked frames in the same area on six other 737 series airplanes with 34,100 to 50,300 pressurization cycles and 21,600 to 32,600 flight-hours. Previously, three other operators had reported similar frame cracks on three airplanes with 29,300 to 47,300 pressurization cycles and 21,800 to 29,500 flight-hours.

Telegraphic Revision 1 advised repeat inspections of the forward cargo compartment frames upon accumulation of 29,000 pressurization cycles and recommemded modification at 25,000 cycles, or as early as manpower and facilities were available, to minimize airplane downtime for repairs.

Revision 2 is issued to formalize telegraphic Re-

vision 1, to provide an alternative method of inspection, and provide repair kits.

C. **Description**

The fatigue life of the affected body frames in the forward and aft cargo compartments can be extended by installing radius fillers in the frame inboard flange, by permanently attaching the compartment lining depressor strip to the inner flange of the frame at the lining splices, and by replacing the nutplate attachment of the lining to the frame with a "Velcro" tape attachment.

To reduce the possibility of unscheduled airplane downtime for repairs on airplanes that have accumulated 25,000 or more pressurization cycles, modification of the frames in the forward cargo compartment is recommended at the earliest opportunity when manpower and facilities are available. In the aft cargo compartment, cracks in the body frames are not anticipated prior to accumulation of 32,500 pressurization cycles but it is suggested that consideration be given to concurrent modification of both compartments at 25,000 cycles in the interest of manpower and airplane downtime savings.

If the modification is not incorporated, periodically inspect the affected airplanes for cracks at the forward cargo compartment, commencing upon accumulation of 29,000 pressurization cycles. On airplanes that have already exceeded 29,000 cycles, accomplish the initial inspection within 100 pressurization cycles after receipt of

the telegraphic issue of Revision 1 of the bulletin.

At the aft cargo compartment, special inspection of the body frames, other than during modification, is not required per this bulletin. It is suggested, however, that particular attention be given to the frames during normal maintenance inspections or when the aft compartment lining panels are removed for any reason.

Inspection at the forward cargo compartment consists of removal of the compartment lining panels and a close visual inspection of the affected body frames for cracks at 9000 pressurization cycle intervals until the modification is accomplished. If desired, removal of the lining panels can be delayed by accomplishing a close visual inspection of the external surface of the body skin panels for cracks at the location of the affected body frames at 300 pressurization cycle intervals. Upon accumulation of a total of 31,400 cycles, remove the lining panels and accomplish a close visual inspection of the affected body frames and repeat the frame inspection at 9000 cycle intervals until the modification is incorporated.

As an alternative to the visual inspection, the affected body frames in the forward cargo compartment can be x-ray inspected at 2000 pressurization cycle intervals or low frequency eddy current inspected at 9000 cycle intervals.

It should be noted however, that if the external

visual or x-ray inspection method is selected, removal of the leading edge of the wing-to-body fairing is required for access to the two aftmost frames at each side of the cargo compartment.

If a crack is found in the body skin by the external visual inspection, or a crack indication is noted by the x-ray or low frequency eddy current inspection, remove the forward cargo compartment lining and accomplish a close visual inspection of the body frames. Give particular attention to the frame at the skin crack or crack indication.

Repair all frame and skin cracks before further flight and continue the repeat inspections until modification is accomplished.

Affected airplanes are divided into three groups because of differences in configuration, requiring different modification and repair kits.

PLEASE REPORT YOUR INSPECTION RESULTS TO CUSTOMER SUPPORT AS SOON AS EACH INSPECTION IS COMPLETED.

CONTACT: C. A. SMITH TELEX 32-9430
STATION 617 OR SITA SEAXS—
OR
BOEING 24 HOUR TECHNICAL
SERVICE
TELEPHONE (206) 237-7240

NOTES:

1. Federal Aviation Airworthiness Directive No. 81-10W-25, Amendment 39-4141, effective June 11, 1981 has been issued regarding in-

spection of the forward cargo compartment body frames.

2. Attached to this service bulletin is an Evaluation Form provided for the purpose of communicating information to the Boeing organization responsible for the service bulletin and its contents. The data you provide will be used to improve the Boeing Service Bulletin Program.

   Please forward this form to your Boeing Field Service Representative or mail directly to:

   Boeing Commercial Airplane Company
   P. O. Box 3707
   Seattle, Washington 98124

   Attention: H. E. Basel
   Manager
   Service Bulletin Engineering
   Mail Stop 9K-25

D. **Approval**

This service bulletin has been reviewed by the Federal Aviation Administration (FAA) and the repairs and modifications herein comply with the applicable Federal Aviation Regulations (FAR's) and are FAA APPROVED.

* * * *

The following message is sent to all affected Boeing 737 operators, all commercial field service bases, regional directors, respective government agencies, FAA Northwest Region Engineering Division, and Air Transport Association. Copy of message sent to respective airline resident representatives at Renton and Everett.

M-7350-81-211 May 11, 1981
ATA 5311 Model 737

Alert Service Bulletin 737-53A1027/Revision 1, Partial Revision

SUBJECT: FORWARD AND AFT CARGO COMPARTMENT SIDEWALL FRAME REINFORCEMENT

REFERENCE: 737 NONDESTRUCTIVE TEST MANUAL D6-7170, SUBJECT 53-10-37, FIGURE 12

NOTE: This service bulletin revision is being sent to all affected 737 operators. If the operator has leased airplanes, this information should be forwarded to the lessee. If the operator has sold airplanes within the last six months, this information should be forwarded to the new owner, unless confirmation has been received that Boeing has included the new operator on the distribution list.

Please notify Boeing of your planned action and inspection results.

1. **Effectivity**

Line numbers 1 thru 231.

2. **Reason for Revision**

This revision is being issued to advise operators that this service bulletin is changed to an alert status. All sections of the original issue of this bulletin are unchanged unless described herein.

Airplanes modified per the original issue of this bulletin do not require additional inspection per this revision.

During a scheduled maintenance check of a 737-200 airplane, an operator recently discovered severe damage to several body frames while replacing damaged lining panels in the lower forward cargo compartment. Three adjacent frames on the left side, at Body Stations 460, 480, and 500 were completely cracked through, just above or below, S-22, including total fracture of the fail safe chord on two of these frames. In addition, the inboard frames of the Body Station 420 frame, just above S-25, and 440 frame, between S-21 and S-23, on the left side were also cracked.

On the right side of the same airplane, the inboard flange of the Body Station 500 frame was cracked above S-26R and the frame at BS 500A had completely separated between S-23R and S-24R.

All of the reported cracks progressed through sidewall lining panel attachment screw holes in the frame inboard flanges.

Extensive damage to the frames, apparently resulting from the handling of heavy cargo, was also noted.

During a fleet check the same operator found cracked frames in the same vicinity on six additional 737 airplanes with 21,552 to 32,639 flight-hours and 34,081 to 50,345 pressurization cycles.

Previous reports indicate that three additional operators have reported similar frame cracking on three airplanes with 21,757 to 29,542 flight-hours and 29,335 to 47,314 pressurization cycles.

Integrity of the frames is necessary for maintaining the body pressure in case of skin damage. Continued operation with a severed frame may lead to skin damage.

3. **Accomplishment Instructions**

If inspection and rework per paragraphs III. A., B. and C. of the original release of this bulletin have not been accomplished, perform the following:

A. On all airplanes with 29,000 or more accumulated pressurization cycles perform one of the following:

1) An external visual inspection for cracks in the fuselage skins, or

2) An x-ray inspection of the fuselage frames, or

3) Remove the compartment lining and perform an internal visual inspection of the fuselage frames.

Inspections shall extend from Body Stations 380 to 520 and between Stringers S-18 and S-26, left and right sides. Accomplish the inspections within 100 pressurization cycles after receipt of this revision or within 300 cycles from the last

external visual inspection, or within 1000 cycles from the last x-ray inspection or within 5000 cycles from the last internal visual inspection.

NOTE: X-ray inspection shall be accomplished on each frame using procedures described in 737 nondestructive test manual D6-7170, subject 53-10-37, figure 12.

B. If cracks are found, gain access and accomplish inspection (if required) and rework per paragraphs III. A., B., and C. of the original issue of this bulletin. Repair skin cracks per 737 structural repair manual or contact Boeing for repair.

As an option to reworking per paragraph III. C. of the original issue of this bulletin, cracked frames and skin may be repaired per the 737 structural repair manual. Return airplane to service and inspect per paragraph III. C. below.

C. If no cracks are found, return airplane to service. Repeat the external visual inspections per paragraph A.1) above at about 300 pressure cycle intervals, or the x-ray inspections per paragraph A.2) above at about 2000 pressure cycle intervals, or the interval visual inspection per paragraph A.3) above at 9000 pressure cycle intervals until inspection and rework per paragraph III. A., B. and C. of the original issue of this bulletin are accomplished.

NOTE: To minimize airplane downtime due to frame damage, it is recommended that inspection and rework per paragraphs III. A., B. and C. of the original issue of

this bulletin be accomplished as soon as manpower and facilities are available on airplanes with 25,000 or more accumulated pressurization cycles.

D. Please report your inspection results, whether positive of negative, to customer support as soon as each inspection is complete.

CONTACT—W. R. Myers, Telex 32-9430
Station 617 or SITA SEAXS—
or
Boeing 24-Hours Technical Service
Telephone (206) 237-3904

4. **Approval**

This service bulletin has been reviewed by the Federal Aviation Administration (FAA) and the inspections, repairs and modifications herein comply with the applicable Federal Aviation Regulations (FAR's) and are FAA approved.

5. **Manhours**

Approximately 5 man-hours and a crew of 2 men are required to accomplish the external visual inspection per airplane.

Approximately 72 man-hours and a crew of 3 men are required to accomplish the internal x-ray inspection per airplane.

Approximately 80 man-hours and a crew of 4 men are required to accomplish the internal visual inspection per airplane.

6. The Federal Aviation Administration (FAA) may

issue an airworthiness directive on this subject in the near future.

BOEINGAIR

D. L. Monchil
707/727/737 Customer Support
Engineering Director
M-7010 9R-10

APPENDIX L

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF CALIFORNIA

No. C 81 3702 WHO
WANG YIN CHIEUN, ET AL.,
Plaintiffs,
VERSUS
THE BOEING COMPANY, A CORPORATION,
Defendant.

No. C 81 3703 MHP
WU CHANG, ET AL.,
Plaintiffs,
VERSUS
THE BOEING COMPANY, A CORPORATION,
Defendant.

No. C 81 4235 TEH
LUI SU NAI-CHAO, ET AL.,
Plaintiffs,
VERSUS
THE BOEING COMPANY, A CORPORATION; ET AL.,
Defendants.

Consolidated Actions

AFFIDAVIT OF JACK H. FOLSOM IN SUPPORT OF BOEING'S MOTION TO DISMISS ON GROUNDS OF FORUM NON CONVENIENS OR TO TRANSFER

Hearing Date: January 22, 1981
Time: 1:30 p.m.
Courtroom: 4. Orrick, J.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

JACK H. FOLSOM, being first duly sworn on oath, deposes and says:

1. I am the Director of Engineering for the 707-727-737 Division of the Boeing Commercial Airplane Company.

2. In contracting with The Garrett Corporation for the 737, Boeing provided specifications for the aircraft's air-conditioning system.

3. Virtually all of Boeing's activities, witnesses and documents relating to the allegations of defects in the design, manufacture, assembly, testing and sale of the subject 737 aircraft are located in Washington State and were so located at the time of the accident. With respect to those persons who Boeing anticipates will or might be witnesses in this action, the great majority are key Boeing employees whose absence from the Seattle area for any significant period of time would substantially disrupt Boeing's operations.

/s/ JACK H. FOLSOM

SUBSCRIBED AND SWORN TO before me this 20th day of November, 1981.

/s/

Notary Public in and for the State of Washington, residing at Seattle

APPENDIX M

Wang and Chow Affidavits

CITY OF TAIPEI

Republic of China

Before me, personally appeared Yu Ching Wang, who after first being sworn, did depose and say:

That deponent hereby places in notarial form the following letter to the Honorable William H. Orrick, Judge, United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, United States of America, to wit:

"I have been requested to write this letter personally explaining the judicial system of the Republic of China (Taiwan) and the laws of the Republic of China in reference to the cases pending before your court involving the air disaster of August 22, 1981. I understand these cases are Consolidated Actions No. C 81 3702 WHO, No. C 81 3703 WHO, and No. 81 4235 WHO. I have likewise been requested to mention my educational and judicial background which is as follows: I was born in mainland China in 1929 and have since become a domiciliary and citizen of the Republic of China. I hold a Bachelor's Degree of Law and a Master's Degree of Law from the Chinese Cultural University and am currently pursuing ny Doctorate Degree of Law as my judicial schedule allows. I have been a judge of the High Court of the Republic of China for the past one and one-half years and likewise for that period of time have been a member of the Judicial Yuan, which is the highest judicial organ of our government. Prior to becoming

a Judge of the High Court of the Republic of China I served as a District Judge for five years and prior thereto served as a prosecutor for almost six years.

The judicial system of the Republic of China is organized on three levels under the Judicial Yuan. The first level is the District Court in which one judge hears evidence and renders a decision thereon in disputes between the party litigants. The second level of the judicial system is the High Court which is the appellate court above the District Court. Upon appeal by a party, a panel of three judges of the High Court reviews the decision of the District Court Judge. The Supreme Court is the third level of our judicial system and upon further appeal by a party, it reviews the decisions of the High Court. The Supreme Court is comprised of five judges.

It is my personal opinion that these cases should remain in the United States court system because of our laws pertaining to the following: (1) jurisdiction; (2) the law to be applied; and (3) filing fees. In this regard, I personally call Your Honor's attention to the following provisions of Chinese statutory law and give my personal opinion as to their meaning and jurisprudential interpretation.

Jurisdiction.

Section 1 (Jurisdiction) as contained in the Code of Civil Procedure promulgated on February 1, 1935, effective from July 1, 1935, amended on December 26, 1945, Part I (General Provisions), Chapter I (The Court) contains thirty one articles, copies of which are attached.

As noted in Article 15, 'jurisdiction over an action arising from a tortious act may be exercised by the court at the place where such act was committed.' The 'tortious act' subject of the instant litigation is the alleged improper design and construction in the United States by Boeing of the 737 aircraft and other acts or failures to act in the United States by the United States defendants. Because these facts existed within the boundaries of the United States, it is inconvenient, even impossble, for the Chinese Court to have available the necessary evidence to make a proper determination of liability. The result of the alleged tortious act occurred in the Republic of China and our jurisprudence has interpreted this to mean that the Chinese courts would then have jurisdiction over the tortious act, but only if the plaintiff initially sought the jurisdiction of the Chinese court. In the instant case the plaintiffs sought the jurisdiction of the American court and should the United States District Court send the case to the Republic of China with only the defendants' agreement, the Chinese court would not be competent to hear the case.

In summary, the Chinese court would only have had jurisdiction of the disaster of August 22, 1981, had the plaintiffs filed the suit in the Republic of China instead of the United States of America.

The Law To be Applied.

Even if the suit had been filed in the Republic of China, the laws of the United States of America would have been applicable to the litigation as to both liability and damages. According to Article 9 of the 'Law Gov-

erning the Application of Laws to Civil Matters Involving Foreign Elements,' promulgated and enforced on June 6, 1953, 'an obligation arising from a wrongful act shall be dealt with by lex loci delicti.' As all of the wrongful acts allegedly occurred in the United States and only the result occurred in the Republic of China, our jurisprudential interpretations of 'lex loci delicti' mandates that the law of the United States be applied in this case. This requirement of application of American law would exist even if the plaintiffs had originally filed the case in the Chinese court. It would be extremely difficult for our judicial system to decide a case according to American law. From my experience as a District Judge and High Court Judge, I personally feel it would be nearly impossible for our court system to adequately adjudicate this massive case against American defendants according to American law.

Filing Fees.

The 'Law Govering the Cost of Civil Actions' was promulgated April 8, 1945, and amended July 4, 1980. Article 2 specifically requires that in a civil action the plaintiff advance as court cost one percent of the amount of the claim. For example, a plaintiff claiming five million dollars in damages would be required to deposit a filing fee of fifty thousand dollars cash simultaneously with filing of the suit. In addition, a party appealing a District Court decision is required to advance in cash an additional cost of one-half of one percent of the amount claimed. A party appealing a decision from the High Court to the Supreme Court would be required to advance in cash a filing fee of an additional one-half of one percent of the amount claimed. If these

fees are not paid as above mentioned the Court will not accept the case. Article 107 of Chapter III of the Code of Civil Procedure provides that a party will obtain procedural relief from paying the cost if the party is 'devoid of the means to pay the cost.' It is rare that a court grants such procedural relief and this relief has been granted in those few cases only when the plaintiff was completely destitute. In this case if the plaintiff would not advance in cash one percent of the amount claimed, the case would be turned down by the Court.

This is for your reference only. I will be pleased to answer questions pertaining to this matter."

Date: January 7, 1982

Taiwan)
City of Taipei)
American Institute in)
Taiwan, Taipei Office)

/s/ YU CHING WANG

Sworn to and subscribed before me this 7th day of January, 1982, at Taipei, Republic of China.

/s/ LLOYD M. RICHARDSON
Notary Public

Special Notary (PL-96-8) duly appointed and qualified

The Code of Civil Procedure

Promulgated on February 1, 1935
Effective from July 1, 1935
Amended on December 26, 1945

PART I

GENERAL PROVISIONS

Chapter I

THE COURT

Section 1 Jurisdiction

ARTICLE 1

A civil action is subject to the jurisdiction of the court at the place where the defendant has his domicile.

If the defendant has no domicile in the Republic of China, or his domicile is unascertainable, the place of his residence in the Republic shall be deemed to be his domicile; if he has no residence, or his residence is unascertainable, the place of his last domicile in the Republic shall be deemed to be his domicile.

If the provisions of the two preceding paragraphs cannot be applied in determining the jurisdiction over a Chinese citizen enjoying extraterritorial privileges in a foreign country, the place where the Capital of the Republic is located shall be deemed to be the place of his domicile.

ARTICLE 2

An action against a public juristic person is subject

to the jurisdiction of the court at the place where the office of such juristic person is located.

An action against a private juristic person or any corporate body which may be made a party to the action is subject to the jurisdiction of the court at the place where the head office or the principal business establishment of such juristic person or corporate body is located.

An action against a foreign juristic person or any foreign corporate body which may be made a party to the action is subject to the jurisdiction of the court at the place where the head office or the principal business establishment of such juristic person or corporate body in the Republic of China is located.

ARTICLE 3

Jurisdiction over an action concerning property rights against a person whose domicile is not found in the Republic of China, or unascertainable, may be exercised by the court at the place where the defendant's attachable property or the subject matter of the claim is located.

If the property of the defendant or the subject matter of the claim happens to be an obligatory right, the place where the obligor has his domicile or where the thing given in security for the debt is located shall be deemed to be the locus of the defendant's property or of the subject matter of the claim.

ARTICLE 4

Jurisdiction over an action concerning property rights against an apprentice, an employee, or any so-

journer, may be exercised by the court at the place of his sojourn.

ARTICLE 5

Jurisdiction over an action concerning property rights against a soldier, a man in military or naval service, or a seaman, may be exercised by the court at the place of his service, at the legal home of the warship to which he belongs, or at the home port of his ship.

ARTICLE 6

Jurisdiction over an action against a person having an office or a business establishment, in so far as it concerns the business of such office or establishment, may be exercised by the court at the place where the office or business establishment is situated.

ARTICLE 7

Jurisdiction over an action against a shipowner or a person who makes use of a ship, in so far as it concerns the matters relating to the ship or navigation, may be exercised by the court at the home port of the ship.

ARTICLE 8

Jurisdiction over an action of a debt incurred by a ship or secured on it may be exercised by the court at the place where the ship is floating.

ARTICLE 9

Jurisdiction over an action instituted by a company or any corporate body or its creditor against a member of the company or the corporate body or by one mem-

ber against another with respect to a claim based on his status as a member may be exercised by the court at the place where the head office or the principal business establishment of such corporate body is situated.

The provision of the preceding paragraph shall apply *mutatis mutandis* to actions instituted by a corporate body or its creditor, or a member, with respect to any claim against its officer, or against a member who has been discharged.

ARTICLE 10

Jurisdiction over an action concerning real rights to immovables or concerning the partition or boundaries of immovables, shall be exclusively exercised by the court at the place where such immovables are situated.

Jurisdiction over other actions concerning immovables may be exercised by the court at the place where such immovables are situated.

ARTICLE 11

Jurisdiction over an action against one and the same defendant concerning a debt and a real right to some immovables guaranteeing the debt may, by amalgamation, be exercised by the court at the place where such immovables are situated.

ARTICLE 12

Jursidiction over an action arising from a contract, in which the place of performance has been agreed upon by the parties, may be exercised by the court at the place of performance.

ARTICLE 13

Jurisdiction over an action arising from claims based on a negotiable instrument may be exercised by the court at the place of payment.

ARTICLE 14

Jurisdiction over an action arising from claims concerning the management of property may be exercised by the court at the place where the property is to be managed.

ARTICLE 15

Jurisdiction over an action arising from a tortious act may be exercised by the court at the place where such act was committed.

Jurisdiction over an action for the recovery of damages resulting from a collision of ships or other accidents at sea may be exercised by the court at the place where the damaged ship first arrives or where the ship doing the damages is seized, or by the court at the port of registry of the defendant ship.

Jurisdiction over an action for the recovery of damages resulting from a crash of aircraft or other accidents in the air may be exercised by the court at the place where the damaged aircraft first lands or where the aircraft doing the damages is seized.

ARTICLE 16

Jurisdiction over an action relating to salvage may be exercised by the court at the place where the salvage was effected or where the salved ship first arrives at.

ARTICLE 17

Jurisdiction over an action relating to registration may be exercised by the court at the place where such registration has been made.

ARTICLE 18

Jurisdiction over an action relating to the right of succession to a hereditary estate, partition thereof, or compulsory portion, or relating to legacies, or dispositions to take effect upon death, may be exercised by the court at the place where the deceased has his domicile at the opening of succession.

If the deceased is a Chinese citizen who has no domicile in the Republic of China or whose domicile is unascertainable at the opening of succession, the provisions of paragraphs 2 and 3 of Article 1 shall apply *mutatis mutandis* to the determination of the competent court under the preceding paragraph.

ARTICLE 19

If, in an action relating to encumbrances on the deceased's estate, the estate in question is located in whole or in part within the jurisdictional boundaries of the court mentioned in the preceding article, jurisdiction over the action may be exercised by such court.

ARTICLE 20

If the domiciles of several persons jointly sued as defendants in one action are not within the same jurisdictional boundaries of a court, all the courts at the place where the defendants have their domiciles will have jurisdiction over them, except where there is a

common competent court as provided for in Article 4 and the other articles following up to the preceding article inclusive.

ARTICLE 21

If the domicile of a defendant, the locus of an immovable, the locus of a tortious act, or any other locus material to the determination of a competent court extends over, or lies within, the jurisdictional boundaries of several courts, all such courts will have jurisdiction over the action.

ARTICLE 22

If one and the same action falls within the concurrent jurisdiction of several courts, it may be brought, at the option of the plaintiff, in any one of them.

ARTICLE 23

Under any of the following circumstances, the court directly superior to the court concerned shall, upon the application of the litigant or at the request of the court trying the case, designate a court to exercise jurisdiction over an action:

1. If, due to some legal or physical impediments, the competent court is unable to exercise its power of adjudication.
2. If, due to the obscurity of jurisdictional boundary, the competency of a particular court cannot be ascertained.

The application referred to in the preceding paragraph may be made to the court trying the case of the court directly superior to it.

No motion of objection may be made against the ruling designating a competent court.

ARTICLE 24

The parties may, by agreement, fix the competent court of first instance, provided that the cause of action arises from a definite legal relation.

The agreement referred to in the preceding paragraph shall be proved by a document.

ARTICLE 25

When the defendant does not attack the incompetency of the court and proceeds orally in the case, the court shall be deemed to be competent.

ARTICLE 26

The provisions of Article 24 and the preceding article do not apply to actions for which exclusive jurisdiction is provided for in this Code.

ARTICLE 27

The competency of a court over an action is determined at the time when the action is instituted.

ARTICLE 28

If, in the opinion of the court, the whole or a part of the action should not be subject to its jurisdiction, it shall, upon the application of the plaintiff or *motu proprio*, transfer the case, by means of a rule, to the court competent to exercise jurisdiction over it.

No motion of objection may be made against the ruling dismissing the application for the transfer of the action.

ARTICLE 29

In case of the existence of urgent circumstances before the transfer of an action, the court shall, upon the application of the plaintiff, take necessary measures.

ARTICLE 30

When the ruling ordering transfer becomes irrevocable, the court to which the case is transferred will be bound by it.

The court above referred to shall not transfer the case further to another court.

ARTICLE 31

When the ruling ordering transfer becomes irrevocable, the case shall be deemed to have been pending *ab initio* in the court to which it is transferred.

In the circumstances aforesaid, the clerk of the court shall forthwith annex the exemplification of the ruling to the records of the case and forward such records to the court to which the case has been transferred.

CITY OF TAIPEI

REPUBLIC OF CHINA

AFFIDAVIT

Before me, the undersigned authority, personally came and appeared John Ding-Chung Chow, duly sworn did depose and say:

To whom these presents may come:

ON this the 8th day of February, 1982, at Taipei,

Taiwan, the Republic of China, the undersigned, John Ding-Chung Chow, do hereby certify as follows:

"I, John Ding-Chung Chow, was graduated with a LL.B. degree from the Department of Law, National Fu-Tan University. I had formerly served as a judge and/or public prosecutor in both the district and the superior courts of the Republic of China for 20 years, and further served as a supreme court judge from January of 1972 to July of 1979 as well as an associate professor of law teaching Chinese Criminal Procedure at the Chinese Cultural University, and have been practicing in the city of Taipei since my retirement from the supreme court.

I have been requested to personally express legal opinions for the reference of American court on the matter of court jurisdiction and the application of laws with regard to the case being litigated by the families of the decedents against the Boeing Company involving the air disaster of Far Eastern Transportation Corporation Ltd., occurred in Taiwan on August 22, 1981. To my knowledge of the laws of the Republic of China and with my experience in legal practice, I personally explain such matters as follows:

1. **Jurisdiction**

According to the provisions of the Code of Civil Procedure of the Republic of China, the Boeing Company is not subject to the ordinary jurisdiction in China simply because the Boeing Company does not have any business establishment in the Republic of China (Article 2 of the same Code). In other words, the Chinese court generally does not have jurisdiction over the Boeing Company. However, under the provision of Para-

garph 1 of Article 15 of the same Code, the Chinese court may have jurisdiction over the instant case. But this is a special jurisdiction that is established for the convenience of the Chinese court to discover the truth of a tortious fact and the investigation of evidences. To my knowledge, the tort liability alleged by the families of the decedents against the Boeing Company is the asserted improper manufacturing and the design of the aircraft in dispute. Since the manufacturing and the design of the aircraft were done in the United States, apparently it would be rather difficult to initiate an investigation into the alleged improper manufacturing and design and other evidences in Taiwan. Should the Chinese court have jurisdiction over the instant case, it would be very evident that the legislative object of Paragraph 1 of Article 15 can not be reached. Besides, the Chinese court would then have jurisdiction over the instant case under the provision of Paragraph 1 of Article 15 of the same Code only in the major premise that the plaintiff has chosen to file the action in the Chinese court. If the plaintiff has filed the action in the U. S. court, it is not sufficient to make the Chinese court have jurisdiction over the instant case only upon the consent of the defendant or the transfer of jurisdiction decreed by the U. S. court.

2. The Law To Be Applied

Article 9 of the "Law Governing the Application of Laws to Civil Matters Involving Foreign Elements" provides that "an obligation arising from a wrongful act shall be dealt with by lex loci delicti." The term "lex loci delicti" shall not cover "the place of result occurred," because the manner of interpreting the rule of deter-

mining the law to be applied should be different from that of the rule of determining the court jurisdiction. The term "lex loci delicti" as referred to in Paragraph 1 of Article 15 of the Code of Civil Procedure of the Republic of China shall be relaxedly interpreted to cover "the place of result occurred" so that the court of the place where the result of a wrongful act occurred will also have jurisdiction and thus the plaintiff will have more courts to be chosen for filing an action. However, in the interpretation of the application of laws, the term "lex loci delicti" must be strictly interpreted because since only one particular law can be applied, it is not permitted to apply two laws at the same time. Therefore, the term "lex loci delicti" from its text shall refer to the place of the cause of the wrongful act (namely, the act of manufacturing and design of the aircraft). This is an authoritative position prevailing in the continental law (civil law) countries (Republic of China is one of such countries). Thus, even though the instant case should be tried by the Chinese court, the product liability alleged upon the Boeing Company shall be governed by the U. S. law. There would be a practical difficulty for the Chinese court to apply U. S. law.

3. Filing Fees

According to Article 78 of the Code of Civil Procedure, the filing fees shall be borne by the losing party. However, subject to Paragraph 2 of Article 94 of the same Code providing that in respect to litigation incurring expenses, the court may require the party concerned to pay such expenses in advance, the plaintiff must pay the filing fees at the time of filing an action. Again, according to Paragraph 1 of Article 2 of the Law

Governing the Cost of Civil Actions, such filing fees shall be one percent of the amount of the claim sued for. If the plaintiff does not advance the fees, the court shall dismiss his action. Moreover, although the plaintiff's obligation of advancing filing fees may be temporarily exempted by the ruling of the court under the provisions of Article 107 of the Code of Civil Procedure, such a court-ruled procedural relief has been rarely granted in practice in China, especially in the case that the most families of the decedents are persons of means to pay the cost of action (those who are of means to pay shall not be granted the procedural relief under Article 107 of the Code of Civil Procedure.)

Based on the above-mentioned, a conclusion comes to me: that it would be more proper for the U. S. court to decide the instant case."

DATE: February 8, 1982

Taiwan)
City of Taipei)
American Institute in) ss:
Taiwan, Taipei Office)

/s/ JOHN DING-CHUNG CHOW

Sworn to and subscribed before me this 8th day of February, 1982, at Taipei, Taiwan, Republic of China.

/s/ DOUGLAS V. ELLICE, JR.
Notary Public

Special Notary (PL 96-8) duly appointed and qualified

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No. 83-647

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LUI SU NAI-CHAO, Individually and as Personal Representative of the Estate of LUI CHO-PON DECEASED, ET AL.,
Petitioners,

v.

THE BOEING COMPANY, Et Al.,
Respondents,

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

RESPONDENT THE BOEING COMPANY'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether the District Court properly exercised discretion in granting a forum non conveniens dismissal of the consolidated suits of several hundred foreign plaintiffs, only a small number of whom were resident aliens, after carefully weighing factors of public interest and private convenience.

II. Whether the United States, as a nation, has an interest in deterring American manufacturers from selling defective products, which constitutes a strong public interest factor favoring retention in some American jurisdiction of any action against an American manufacturer, even if the accident allegedly caused by the product occurred abroad and the plaintiffs are predominantly foreign.

III. Whether petitioners, who are predominantly foreign, are entitled to the same presumption favoring retention of jurisdiction by the federal courts that American plaintiffs would have received.

LIST OF ALL PARTIES TO THE PROCEEDING IN THE NINTH CIRCUIT COURT OF APPEALS

Petitioners' list of parties includes the following six individuals who were not proper parties before the Ninth Circuit and are not proper parties to this petition: Yin Lin Chow, Richard Chow, Lauren Chow, Raymond Chow, Karen Chow, and Mary Chow. Petition at xiv. Petitioners also list seven individuals who they acknowledge were not parties to the proceedings below. Petition at xix-xx. Respondent objects to the inclusion of these seven in the list of parties and further objects to the characterization of them as interested parties.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, The Boeing Company, respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the Ninth Circuit Court of Appeals' decision in this case.

STATEMENT OF THE CASE

This litigation arises from the inflight breakup of a Boeing 737 aircraft operated by Far Eastern Air Transport Corporation ("FEAT"), a Taiwanese corporation. The aircraft, which FEAT had bought from United Airlines in 1976, was on a

domestic flight within Taiwan at the time of the accident. The Chinese Civil Aeronautics Authority, after investigating the accident, has concluded that the cause of the breakup was cracks in the aircraft's body, caused by rust and corrosion, which gave way under pressure. The aircraft had been maintained by FEAT personnel at FEAT's maintenance headquarters in Taiwan for over five years prior to the accident. *Cheng v. Boeing Co.*, 708 F.2d 1406, 1408 (9th Cir. 1983).

Petitioners and others sued respondents and others in the United States District Court for the Northern District of California. *Nai-Chao v. Boeing Co.*, 555 F. Supp. 9, 10 n.1 (N.D. Cal. 1982). The plaintiffs alleged that they were personal representatives of surviving relatives of persons killed in the accident. The district court found that out of a total of 564 plaintiffs, seven were United States citizens, four were aliens residing in this country, and the rest were nonresident aliens. *Id.* at 10.

On respondents' motion, the court ordered a dismissal of the suits that was contingent upon the fulfillment of certain conditions designed to facilitate plaintiffs' ability to sue in Taiwan. *Id.* at 22. One of these conditions—"[t]he courts of Taiwan have, and will assert, jurisdiction over these actions"—preserved the right of petitioners to resume their federal actions if the courts of Taiwan declined jurisdiction over their suits.

In reaching its decision, the district court first determined, based on affidavits submitted by both plaintiffs and defendants, that the Taiwanese courts were an alternative forum available to plaintiffs. The court then conducted a careful analysis of the "private interest" and "public interest" factors established by this Court for forum non conveniens motions in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

In weighing the private factors, the court catalogued the distribution of relevant evidence between Taiwan and the United States as follows: Evidence of FEAT's maintenance of the aircraft and of the investigation of the crash by the Chinese Civil Aeronautics Authority as well as the wreckage itself were all located in Taiwan. Additionally the damages evidence for almost all of the plaintiffs was in Taiwan and would require

translation before it could be heard in a United States court. *Nai-Chao*, 555 F. Supp. at 17-18. Evidence regarding the design, manufacture and certification of the aircraft and its maintenance by United Airlines were located in the United States. *Id.* at 17.

The court noted that it lacked process to compel the attendance of Taiwanese witnesses to the above matters and that discovery abroad in conjunction with a United States trial was likely to be fragmentary. *Id.* at 18.[1] The court also recognized that it was doubtful whether defendants could implead FEAT and the Chinese Civil Aeronautics Authority, whose absence would preclude a fair evaluation of third-party liability. *Id.* at 18-19.[2]

Proceeding to the public interest factors, the district court found them to be decisive. First, with its docket heavily congested, the court was reluctant to take a complex case that lacked significant connections to the forum. *Id.* at 19. Second, the court deferred to the principle that localized controversies should be tried where they arise. In this case, Taiwan had a strong local interest: the case involved an accident in Taiwanese airspace, a Taiwan-registered aircraft operated and maintained by a Taiwanese airline, and mostly Taiwanese decedents (87 of 110). The court also noted that the many contacts the litigation had with Taiwan outweighed the only possible American interest, the deterrence of Americans from manufacturing defective products—an interest that this Court had, in any case, discounted as a consideration in its forum non conveniens analysis in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). *Nai-Chao*, 555 F. Supp. at 19-20. Finally, the court concluded that under California choice of law principles Chinese law could govern the case, which would create a further burden for the court. *Id.* at 20-21.

The court held that these public interest factors, which it characterized as its "own administrative and legal problems" *id.* at 22, and the private interest factors compelled conditional dismissal of the suit, despite the presence of "a handful of

[1] By contrast, petitioners' access to Boeing and United employees as witnesses in a Taiwan trial is guaranteed by the terms of the district court's conditional dismissal.

[2] The court added that this ground was not necessary for granting the forum non conveniens motion. *Nai-Chao*, 555 F. Supp. at 19 n.14.

American plaintiffs." *Id.* at 21-22. The court concluded that plaintiffs' choice of an American forum was "outweighed by the private and public interest factors pointing towards dismissal of this action . . . ." *Id.* at 21.

On appeal, the Ninth Circuit upheld the district court's decision after noting that the court had analyzed the public and private factors and after addressing plaintiffs' general objections. *Cheng*, 708 F.2d at 1411.

REASONS FOR DENYING THE WRIT

I. The Decision Below Does Not Raise the First Question Presented in the Petition.

Petitioners' first question assumes the correctness of petitioners' assertion that the district court dismissed the action primarily or even solely because its docket was crowded. Petition at 5-6, 9. In fact, this assertion is wrong. The district court weighed several private and public interest factors in reaching its decision. *See Nai-Chao*, 555 F. Supp. 17-21. Its discussion of public factors alone fills two pages and consists of seven paragraphs. *Nai-Chao*, 555 F. Supp. at 19-21. Only once during this discussion, in a single sentence in the third paragraph, did the court mention its own docket:

> It is beyond dispute that the docket of this Court is heavily congested, and that the Court can ill afford the time and expense of adjudicating a controversy which does not have significant connections to this forum, particularly where, as here, the case will require a massive expenditure of judicial resources.

Id. at 19. Even here, the court weighed in conjunction with the docket factor a second public factor: the absence of any local interest in the case. This second factor and the possible application of Chinese law dominate the remainder of the discussion.

Because the district court did not dismiss petitioners' action solely because of its crowded docket, what petitioners style an "inter-circuit conflict as to *Piper's* effect on the legitimacy of

docket-protection as a controlling forum non conveniens factor" does not exist. Petition at 17. The asserted conflict with *Lake v. Richardson-Merrell, Inc.*, 538 F. Supp. 262 (N.D. Ohio 1982), in which a district court declined to dismiss a suit solely because of its crowded docket, is equally illusory. *Id.* at 275.

Petitioners also allege conflicts between the decisions below and a Fifth Circuit opinion, *Pusat v. M/V Tel Aviv*, 711 F.2d 1231 (5th Cir. 1983). Petition at 17. These supposed conflicts concern two issues: standard of appellate review and the appropriate weight to be given to a plaintiff's choice of forum. Neither of these issues is relevant to petitioners' first question presented. In any event, there is no such conflict between *Pusat* and *Cheng*. Both cases employed the same abuse of discretion standard for appellate review set forth by this Court in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981).[3] Furthermore, both require the defendant to present factors that "strongly" favor trial in a forum different from that chosen by plaintiff.[4]

II. The Second Question Presented in the Petition Was Resolved by This Court in Piper.

Petitioners' second question raises an issue that was directly addressed in *Piper*. They ask this Court to review the question of whether there is a domestic interest in deterring United States manufacturers from distributing defective products that constitutes a strong "public interest" factor to be weighed by courts deciding forum non conveniens motions. In

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[3] *Compare Pusat v. M/V Tel Aviv*, 711 F.2d 1231, 1241 n.2 (5th Cir. 1983) (appellate court may reverse district court only if latter's action "constituted a clear abuse of discretion") *with Cheng v. Boeing Co.*, 708 F.2d 1406, 1409 (9th Cir. 1983) (decision of lower court "may be reversed only when there has been a clear abuse of discretion") *and with Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981) (trial court's decision "may be reversed only when there has been a clear abuse of discretion").

[4] *Compare Pusat*, 711 F.2d at 1240 (burden on defendant to present factors that "strongly favor trial in a specific alternative forum") *with Cheng*, 708 F.2d at 1410 ("plaintiff's choice of forum should not be disturbed 'unless the balance is strongly in favor of the defendant'") *and with Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981) ("[T]here is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum"). *See also Nai-Chao v. Boeing Co.*, 555 F. Supp. 9, 21 (N.D. Cal. 1982) ("strong presumption in favor of the plaintiff's choice of forum" may be overcome "only when the private and public interest factors clearly point towards trial in the alternative forum").

other words, petitioners suggest that deterrence should be added to the "public interest" factors first enumerated by this Court in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

In *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), this Court rejected the identical argument, using the following language:

> Respondent argues that American citizens have an interest in ensuring that American manufacturers are deterred from producing defective products and that additional deterrence might be obtained if Piper and Hartzell were tried in the United States, where they could be sued on the basis of both negligence and strict liability. However, the incremental deterrence that would be gained if this trial were held in an American court is likely to be insignificant.

The district court below quoted this language from *Piper* and found it fully applicable to the case before it. *Nai-Chao*, 555 F. Supp. at 19-20.[5]

III. The Decision Below Does Not Present the Third Question Presented in the Petition.

Petitioners' third question concerns a hypothetical suit involving United States law and United States plaintiffs. The district court, however, found it "quite possible" that Chinese law would apply to this case. *Id.* at 21. And petitioners, contrary to their allegations, have among their numbers no United States citizens and very few resident aliens.

Petitioners name nine United States citizens as claimants. Petition at 87. None of these individuals is presently a party to this litigation. The petition itself states that the first four listed, F. Marrs, Y.L. Wang, L. Wang, and N. Wang Lin, were "not

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[5] Petitioners attempt to inflate the importance of any defects in this case by stating that it "involves terrifying defects in hundreds of Boeing's jetliners." Petition at 20. This statement is incorrect. Petitioners' support for it is a Boeing service bulletin included as an appendix to the petition. Petition at 20 n.74. The service bulletin, originally issued ten years *before* the Taiwan accident, deals with the subject of aircraft frame cracks caused by fatigue. *Id.* at 128-29. The Chinese Civil Aeronautics Authority found, however, that the cracks in the aircraft in this case were caused by rust and corrosion. *Cheng*, 708 F.2d at 1408. In fact, EEAT had complied with the Boeing service bulletin. Affidavit of Thurman Jones; Excerpts of Clerk's Record at 713, 720. Furthermore, the accident aircraft showed no signs of frame cracks. *Id.*

parties to the proceedings below." Petition at xx; *see also id.* at 3 n.1 (Mrs. Marrs filed in state court); *id.* at 96 (same). The last five, R. Chow, M. Chow, L. Chow, R. Chow, and K. Chow, were parties in the district court, but failed to file a notice of appeal and therefore were not parties to the Ninth Circuit decision of which petitioners seek review. Excerpts of Clerk's Record at 908-13 (notice of appeal); Petition at 103 (letter of petitioners' attorney); *id.* at 100 (letter of respondents' attorney).

Petitioners also name twelve resident aliens as claimants. Petition at 88-89. Two of these individuals, Y.C. Wang and Y.L. Chow, are not proper parties for reasons stated above.[6] Five more, N.C. Ho, L.W. Lan, L.W. Chin, L. Lai, and P. Chang, have never before in the course of this litigation been identified as United States residents. Petitioners may not now allege their residency. *See Adickes v. Kress & Co.*, 398 U.S. 144, 157 n.16 (1970) (Court cannot consider factual statement not in record of proceedings below); *Russell v. Southard*, 53 U.S. (12 How.) 139, 158-59 (1851) (Supreme Court affirms or reverses upon the case as it appears in the record). The five remaining individuals, M. Rippin, S.J. Sze, E. Sze, S. Sze, and A. Sze are resident aliens and presently parties to this litigation.[7]

Petitioners number, by their own count, more than 500. Petition at 3. They thus ask this Court to rule on a presumption to be accorded a United States plaintiff, when fewer than one percent of them are even resident aliens. Such a ruling, even if favorable to petitioners, would have to be irrelevant to this litigation, given the overwhelming percentage of petitioners who are foreign citizens living abroad. Otherwise, the fortuity of the presence of a few resident aliens in a predominantly foreign lawsuit would have disproportionately significant effects on the forums available to the action. Furthermore, this Court has

[6] Y.C. Wang is not a proper party for the same reason that F. Marrs, Y.L. Wang, L. Wang, and N. Wang Lin are not. J. Chow is not a proper party for the same reason that R. Chow, M. Chow, L. Chow, R. Chow, and K. Chow are not.

[7] Of the four Szes, one is the personal representative of the estate, so that the three are improperly joined under California law. *See* Cal. Civ. Pro. Code § 377 (West Supp. 1983) (heirs or personal representative on their behalf may maintain wrongful death action); *Gordon v. Reynolds*, 10 Cal. Rptr. 73, 75 (Cal. Dist. Ct. App. 1961) (under § 377, administratrix or heirs may sue for wrongful death, but not both).

practically decided the third question by ruling that when a plaintiff who, like almost all of the petitioners, is foreign selects federal court as his forum, his choice deserves less deference than the choice of a resident or citizen plaintiff. *Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 255-56 (1981).

None of the circuit court opinions cited by petitioners as conflicting with the decisions of the courts below even suggest the existence of a presumption against dismissing an action brought by a group of foreign plaintiffs because of the presence of a few resident aliens among them.

CONCLUSION

The Petition mischaracterizes the facts and reasoning of the district court and the court of appeals. As a result, the first and third questions the Petition raises are irrelevant to this litigation. The second question this Court has already decided. Consequently, this litigation presents no question of sufficient importance to deserve the attention of this Court, and the petition for a writ of certiorari should be denied.

Respectfully Submitted,

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